TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~276~~ 87

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, APPELLANT,

vs.

THE NEW ORLEANS AND CARROLLTON RAILROAD COMPANY, G. T. BEAUREGARD, JOSEPH HERNANDEZ, G. W. BINDER, AND ALEXANDER BONNEVAL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 5, 1869.

14.

SUPREME COURT OF THE UNITED STATES.

No. 278.

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THE NEW ORLEANS AND CARROLLTON RAILROAD COMPANY, G. T. BEAUREGARD, JOSEPH HERNANDEZ, G. W. BINDER, AND ALEXANDER BONNEVAL.

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1 United States circuit court, 5th circuit and district of Louisiana.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLTON RAILROAD, and G.T. Beauregard, A. Bonneval, and others.
} No. 5359.

Bill.—Filed December 3d, 1867.

To the honorable the circuit court of the United States for the fifth circuit, holding sessions in New Orleans for the district of Louisiana, in chancery:

The Fourth National Bank of the City of New York brings this bill of complaint against the New Orleans and Carrolton Railroad Company, represented by L. Millandon, the president thereof, and also
2 against G. T. Beauregard, and also against Joseph Hernandez, G. W. Binder, and Alexander Bonneval.

Humbly complaining, your orator avers that the said Fourth National Bank of the City of New York is a duly incorporated institution of the United States; that the said bank is domiciliated and located in the said city of New York, and is a citizen of the said State of New York; and that said New Orleans and Carrolton Railroad Company is a duly incorporated institution by the State of Louisiana, and is located in and domiciled in the said State, and is a citizen of the State of Louisiana; and that the said G. T. Beauregard, Alexander Bonneval, Joseph Hernandez, G. W. Binder, and L. Millandon, president of the said New Orleans and Carrolton railroad, are each and all citizens of the
3 State of Louisiana, and reside therein.

Your orator further says that on or about the 12th day of April, 1866, A. D., the said G. T. Beauregard leased from the said New Orleans and Carrolton Railroad Company the railroad of the said company, together with the real estate of the said company, also all the rolling stock and movables of the said company, together with all the rights, privileges, and franchises belonging to said company, for and during the term of twenty-five years, as is more fully set forth in the exhibit marked A, hereunto annexed and made a part of this bill.

Your orator further says that on or about the 18th day of April, 1866, the said Beauregard entered into a contract and formed a copartnership with T. P. May and Augustus C. Graham, such as is more fully
4 and particularly set forth in the annexed exhibit marked B, which is made a part of this bill; that in said contract the said Beauregard acknowledged that the lease he had obtained from the said New Orleans and Carrolton Railroad Company was made by him in his name, but was really for the joint accounts of himself and the said T. P. May and Augustus C. Graham.

The manner in which the business of the copartnership should be conducted, the payments to be made by each partner, and the interest of each partner in the said business and copartnership, are fully set forth in the annexed exhibit marked "B."

It was also further stipulated that the partnership was to continue for the full term of the lease, and that in the event of the death or assignment of interest by any one of the partners the business was to be continued between the surviving partners and the heirs of the deceased, or to the assignees of said interest.

Your orator further says that on or about the 8th day of May, 1867, the said Augustus C. Graham conveyed, transferred, and assigned his interest, for a good and lawful consideration in and to the said business and copartnership, to the compainant, to wit, to the Fourth National Bank of the City of New York, as will more fully appear from the annexed exhibit marked C, which is here referred to and made a part of this bill.

That by the said instrument all the rights and interest of the said Graham in the said business and copartnership were transferred and conveyed to your orator; all of which facts were well known to the said New Orleans and Carrolton Railroad Company and to the said Beauregard, Bonneval, Hernandez, and Binder.

6 Notwithstanding this knowledge on their part, the said parties, as your orator has been informed and believes, have confederated and combined together to deprive your orator, illegally and unjustly, of the interest transferred, as hereinbefore set forth, to the said Fourth National Bank of the City of New York.

The said parties, as your orator has been informed and believes, have taken possession of the interest of the said Fourth National Bank in the said lease and copartnership, and the business of the said copartnership, and refuse to recognize that the said Fourth National Bank has any interest whatever in the said railroad, or the business carried on by the copartnership originally entered into by said Beauregard, May, and Graham.

That by said articles of copartnership, to wit, the exhibit marked B, the said Graham was entitled to be reimbursed the capital by him

7 invested in the copartnership, with eight per cent. per annum interest, and to one-third of the profits made in the said business. He had the right at all times to inspect the books of the concern, and by the said articles of copartnership monthly statements were to be rendered to him of the amounts received and expended.

That by the articles of copartnership Graham bound himself to make certain payments therein specified, amounting to the sum of one hundred and fifty thousand dollars. He actually did make the payments therein stipulated. The exact amount so paid by him your orator has not been informed of and cannot at present state, but believes the sum so paid by him exceeded one hundred thousand dollars. Your orator, if deemed important, will hereafter, when informed, state the full amount so paid by said Graham.

All the rights of said Graham were transferred to the com-

8 plainant.

Your orators are informed that profits were made by the said copartnership, to which the said Fourth National Bank is entitled. That these profits amount to a large sum, greatly exceeding two thousand dollars.

The parties herein complained of, as your orator is informed, claim to hold the interest of the said May in the said copartnership, by assignment from him, and refuse to pay the said Fourth National Bank the capital, with interest, advanced by said Graham, or any of the profits earned by the said copartnership, or to permit the agents of the said bank to examine the books of copartnership, or to render any account whatever to the said bank; all which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong, injury, oppression of your orator in the premises.

In consideration whereof, and forasmuch as your orator is en-

9 tirely remidiless in the premises, according to the strict rules

the common law, and can only have relief in a court of equity; matters of this nature are properly cognizable and relievable; end, therefore, that the said defendants may be ordered to rec[illegible] the interest of the said national bank in the said copartnership, a[illegible] the business carried on under the said lease as specified in the ex[illegible] marked B, and to render a just and true account of the said copartnership, and to pay to the said Fourth National Bank the amount of capital and interest thereon advanced to the copartnership by the said Graham, and further, to pay over to the said bank one-third of the profits made in the said business, and that your orator may have such other and further relief in the premises as the nature of the case requires:

May it please this honorable court to grant unto your orator
10 the most gracious writ of subpœna of the United States of America, to be directed to the said New Orleans and Carrolton Railroad Company, represented by said L. Millandon, the president thereof, and also the said G. T. Beauregard, and also to the said Alexander Bonneval, to the said Joseph Hernandez, and to the said G. W. Binder, commanding them, and each of them, at a certain day to appear before this hon. court, and then and there to answer all and singular the premises, and to perform and abide such order and decree therein as to this honorable court shall seem meet; and your orator shall ever pray, &c., &c.

(Signed) ELMORE & KING,
Solicitors for Complainant.

W. W. King, agent and attorney for the complainant in the foregoing bill, being duly sworn, states that the facts set forth in the said bill are true to the best of his knowledge and belief.

11 (Signed) WM. W. KING.

Sworn to and subscribed before me December 3d, 1867.
(Signed) F. B. VINOT, *D'y Clk.*

Exhibit A.—Filed with bill.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this twelfth day of April, eighteen hundred and sixty-six, before me, Selim Magner, a notary public, duly commissioned and sworn, in and for the parish of Orleans, personally came and appeared George Currie Duncan, esquire, of this city, president of, and herein acting for, the "New Orleans and Carrolton Railroad Company," and moreover authorized to act in the premises by virtue of a resolution of the board of directors of said company, adopted at their meeting held on the tenth day of April current, a certified copy whereof
12 is hereunto annexed as part hereof, who declared that he does, by these presents for and on behalf of the said New Orleans and Carrolton Railroad Company, lease and let unto Gustave Toutant Beauregard, esquire, of this city, here present and accepting for himself and his heirs, all and singular the railroad track and appurtenances of the said New Orleans and Carrolton Railroad Company, as hereinafter set forth, which lease is to commence and to be computed from the sixteenth day of April current, and to continue for the full term and space of twenty-five years from said date, and which lease is made on the following terms and conditions, to wit:

1st. Said lessee shall pay hire and rent for said railroad and appurtenances at the following rates, to wit: Twenty thousand dollars for the

Your orator further says that on or about the 8th day of May, 1867, the said Augustus C. Graham conveyed, transferred, and assigned his interest, for a good and lawful consideration in and to the said business and copartnership, to the compainant, to wit, to the Fourth National Bank of the City of New York, as will more fully appear from the annexed exhibit marked C, which is here referred to and made a part of this bill.

That by the said instrument all the rights and interest of the said Graham in the said business and copartnership were transferred and conveyed to your orator; all of which facts were well known to the said New Orleans and Carrolton Railroad Company and to the said Beauregard, Bonneval, Hernandez, and Binder.

6 Notwithstanding this knowledge on their part, the said parties, as your orator has been informed and believes, have confederated and combined together to deprive your orator, illegally and unjustly, of the interest transferred, as hereinbefore set forth, to the said Fourth National Bank of the City of New York.

The said parties, as your orator has been informed and believes, have taken possession of the interest of the said Fourth National Bank in the said lease and copartnership, and the business of the said copartnership, and refuse to recognize that the said Fourth National Bank has any interest whatever in the said railroad, or the business carried on by the copartnership originally entered into by said Beauregard, May, and Graham.

That by said articles of copartnership, to wit, the exhibit marked B, the said Graham was entitled to be reimbursed the capital by him
7 invested in the copartnership, with eight per cent. per annum interest, and to one-third of the profits made in the said business. He had the right at all times to inspect the books of the concern, and by the said articles of copartnership monthly statements were to be rendered to him of the amounts received and expended.

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The parties herein complained of, as your orator is informed, claim to hold the interest of the said May in the said copartnership, by assignment from him, and refuse to pay the said Fourth National Bank the capital, with interest, advanced by said Graham, or any of the profits earned by the said copartnership, or to permit the agents of the said bank to examine the books of copartnership, or to render any account whatever to the said bank; all which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong, injury, oppression of your orator in the premises.

In consideration whereof, and forasmuch as your orator is en-
9 tirely remidiless in the premises, according to the strict rules

the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable; to the end, therefore, that the said defendants may be ordered to recognize the interest of the said national bank in the said copartnership, and in the business carried on under the said lease as specified in the exhibit marked B, and to render a just and true account of the said copartnership, and to pay to the said Fourth National Bank the amount of capital and interest thereon advanced to the copartnership by the said Graham, and further, to pay over to the said bank one-third of the profits made in the said business, and that your orator may have such other and further relief in the premises as the nature of the case requires:

May it please this honorable court to grant unto your orator
10 the most gracious writ of subpœna of the United States of America, to be directed to the said New Orleans and Carrolton Railroad Company, represented by said L. Millandon, the president thereof, and also the said G. T. Beauregard, and also to the said Alexander Bonneval, to the said Joseph Hernandez, and to the said G. W. Binder, commanding them, and each of them, at a certain day to appear before this hon. court, and then and there to answer all and singular the premises, and to perform and abide such order and decree therein as to this honorable court shall seem meet; and your orator shall ever pray, &c., &c.

(Signed) ELMORE & KING,
Solicitors for Complainant.

W. W. King, agent and attorney for the complainant in the foregoing bill, being duly sworn, states that the facts set forth in the said bill are true to the best of his knowledge and belief.

11 (Signed) WM. W. KING.

Sworn to and subscribed before me December 3d, 1867.

(Signed) F. B. VINOT, *D'y Clk.*

Exhibit A.—Filed with bill.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this twelfth day of April, eighteen hundred and sixty-six, before me, Selim Magner, a notary public, duly commissioned and sworn, in and for the parish of Orleans, personally came and appeared George Currie Duncan, esquire, of this city, president of, and herein acting for, the "New Orleans and Carrolton Railroad Company," and moreover authorized to act in the premises by virtue of a resolution of the board of directors of said company, adopted at their meeting held on the tenth day of April current, a certified copy whereof
12 is hereunto annexed as part hereof, who declared that he does, by these presents for and on behalf of the said New Orleans and Carrolton Railroad Company, lease and let unto Gustave Toutant Beauregard, esquire, of this city, here present and accepting for himself and his heirs, all and singular the railroad track and appurtenances of the said New Orleans and Carrolton Railroad Company, as hereinafter set forth, which lease is to commence and to be computed from the sixteenth day of April current, and to continue for the full term and space of twenty-five years from said date, and which lease is made on the following terms and conditions, to wit:

1st. Said lessee shall pay hire and rent for said railroad and appurtenances at the following rates, to wit: Twenty thousand dollars for the

first year of this lease, and an additional sum of five hundred dol
13 lars to each and every year's rent until the termination of this lease, by reason of which the last year's rent would amount to thirty-two thousand dollars, and all which rents shall be paid by said lessee monthly, at the end of each and every month of this lease, on the simple receipt of said company, the present lessors, or that of their duly authorized officer or agent.

2d. The main track of the said railroad, its branches, (in Jackson street, Louisiana avenue, and Napoleon avenue,) sidlings, and turn-tables, from Dublin street, Carrolton, to New Orleans, feed on hand, animals, and other appurtenances of said road, rolling stock, and fixtures of stables, are hereby transferred free of charge to said lessee, for the purposes of this lease; said lessee shall have the right of selling the steam-engines, cars, and the appurtenances thereof, for the purpose of purchasing horse cars, and horses or mules, and arranging for
14 horse-car purposes the railroad tracks from Tivoli Circle to Carrolton, and to the river, and on the express condition that he, the said lessee, shall furnish all additional sums required to complete said change or changes.

3d. The square of ground in Carrolton, bound by Dublin, Thompson, Madison, and First streets, with all the buildings, sheds, shops, &c., thereon, are likewise leased and let to him, said Beauregard, for the term and space of one year from the date of this lease, at a rent of fifteen hundred dollars, to be payable monthly on the simple receipt of said company or their agent; the lessors, however, reserving to themselves the right of leaving on said square of ground such movable property as they may find or deem convenient; and furthermore the use of the second-story office at Carrolton, and also the use of the store-rooms, provided the latter does not interfere with the current wants of
15 the lessee, or with his business.

4th. All the rails, switches, cross-ties, and the appurtenances of the road under the passenger's depot, presently leased for one year, shall revert to the said lessee at the expiration of said year.

5th. The said lessee shall construct, at his own cost and expense, a double track on Baronne street, from Triton walk to Canal street, and a turn-table at the junction of said two streets, or a single track through St. Charles and Canal streets to Baronne street, and in order to obtain the right of way for said purpose, the said lessee shall have the right of offering to the city authorities of New Orleans on the part of the New Orleans and Carrolton Railroad Company, to abandon the privilege of using steam-engines on said road, within the city limits, but all
16 right of way and any other privilege must be obtained in the name of said company, the present lessors, and for and during the whole term of the charter of said company.

6th. The said lessee shall hold and possess, free from rent during the whole term of this lease, (he paying all taxes thereon,) the square of ground on Napoleon avenue, near the railroad, belonging to said company, the present lessors, and said lessee shall have the right to construct on said square of ground such buildings as may be required for his railroad purposes, all which buildings and other improvements shall be insured by him, said lessee, at his own cost, and all which buildings and improvements shall revert to the said lessors free of cost, charge, or expense, at the expiration of this lease, and in case any of the buildings which may be constructed by said lessee should be destroyed by fire, the amount of insurance recovered shall be immediately employed by said lessee in the reconstruction of said buildings.

17 7th. The said lessee shall have the use of the stables and other buildings belonging to said lessors on St. Charles street, between Felicity and Polymnia streets, free of all charges, (including taxes and insurance,) until the said lessee shall have constructed for his railroad use other stables and buildings on the square of ground situate on Napoleon avenue near the railroad referred to in article sixth, provided that this privilege to said stables and buildings on St. Charles street shall terminate on the thirty-first of December, 1866.

8th. The said lessee shall have the right to take up such branch roads to the river, from Canal street to Carrollton, as may be intersected by other street railroads, and to use of such rails in repairing the main track on any other street from Tivoli Circle to Canal street, thence to Baronne street.

18 9th. Said lessee shall not have the right to use or claim the use of any other stables or buildings belonging to said lessors than those already mentioned.

10th. At the expiration of this lease, the said road, main track, branches, and sidlings, the feed on hand, materials for repairs, rolling stock, buildings, mules, horses, and other appurtenances of said road, rolling stock and appurtenances, and stables belonging or attached thereto shall be equal in value to those delivered to said lessee, to be established, by the inventory thereof, to be taken as set forth in article eleventh of this lease, and the whole shall revert, all in good order and condition, to the said New Orleans and Carrollton Railroad Company, free of charges, expenses, liens, or encumbrances of any kind or nature.

11th. An inventory to be hereto annexed, signed by said parties, and paraphed by me, notary, shall be taken by two experts, one
19 appointed by said lessors, and one by said lessee, of all the moveable property of the said lessors, to be delivered over to the said lessee, to which inventory, and every item therein, shall be affixed the value thereof, and in case of difference of opinion or disagreement between said experts, an umpire shall be named by the said two experts, and it is hereby well understood that should any loss accrue to said lessee upon sales which he may make of any portion of the moveable property within eighteen months from the date hereof, such loss shall be in reduction of the amount of said inventory; provided always, that after the expiration of said eighteen months from the date hereof, no claim for such reduction shall be made on the part of said lessee, and at the expiration of this lease, the value of the moveable property to be turned over by said lessee to said lessors shall be determined
20 by experts in the same manner as above set forth.

12th. All taxes (government, State, or municipal) which may be assessed on the property leased, or on its gross receipts or income, shall be borne and paid for by the said lessee during the term of this lease, and the said lessee shall assume all the obligations imposed by the charter of said company, and be personally responsible, with his securities hereinafter named, should any violation thereof impair the rights of said New Orleans and Carrollton Railroad Company.

13th. The said lessee also does assume all liabilities for accidents to limb, life, or property occurring on the road during the term of this lease.

14th. In case the said lessee should at any time, during the term of this lease, fail or refuse to pay the rent as stipulated, the said lessors shall have the right to rescind this present lease, and in that event
21 the lessee shall have no claim for remuneration for any improvements or additions made by him to the road or its appurtenances.

15th. All the presently leased premises, the branches, rolling stock, and other appurtenances, shall be transferred to said lessee on the sixteenth day of April current, free from all claims for debts, taxes due, and other similar encumbrances, and the lease for the office of said railroad at No. 15½ on Baronne street shall likewise be transferred to said lessee, who shall pay the present rent for the same until the first of November, 1866, the term of said lease.

16th. The said lessee, after obtaining the consent of the mayor and council of Carrollton, shall have the use, during the term of this lease, of that portion of the Jefferson and Lake Pontchartrain Railway Company, extending from the New Orleans and Carrolton Railroad Company depot to the upper limit of the town of Carrollton, he, said
22 lessee, in such case, paying to the said New Orleans and Carrollton Railroad Company the value of the iron now on said portion of said road, which he agrees to return in good order and condition at the end of this lease to the said New Orleans and Carrollton Railroad Company.

17th. And it is furthermore agreed that the president and secretary of said New Orleans and Carrollton Railroad Company shall at all times have free passage on the cars of said lessee.

18th. The said lessee shall not have the right of transferring this lease, or of underletting the presently leased premises, without the written consent of the board of directors of the said New Orleans and Carrollton Railroad Company.

And thereupon personally came and appeared, and intervened to this act, Thomas P. May and Augustus C. Graham, both of this city,
23 who, having taken cognizance of this present act of lease, declared that they do hereby bind themselves and their heirs in solido with the said present lessee to the said New Orleans and Carrollton Railroad Company, their successors and assigns, as well for the true and faithful compliance on the part of said Beauregard with all the clauses, conditions, and stipulations herein contained, as for the true and punctual payment of the whole of the rents specified herein.

The U. S. internal revenue stamps of sixty-five dollars on this act are hereto attached.

Thus done and passed in my office, at New Orleans aforesaid, on the day, month, and year first before written, in the presence of Edward G. Gottschalk and James Fahey, competent witnesses, who sign these presents with the said appearers and me, notary, after reading thereof.

And before signing these presents, it has been further agreed
24 and stipulated that said lessee shall have and enjoy joint use and occupation with the lessors of the Tivoli Circle depot, up to and until the 31st December next, (1866,) provided the lessee does not interfere with the uses that the lessors may have of the same, which uses, however, shall not interfere with the occupation of said building by the lessee as a passenger and freight shed, and, provided, moreover, that said lessee shall keep up the fences around said property, and shall claim no part of the revenues derived by the lessors from the stalls, &c., in said building.

(Original signed)

G. CURRIE DUNCAN, *Pres't.*
G. T. BEAUREGARD.
A. C. GRAHAM.
T. P. MAY.
E. G. GOTTSCHALK.
JAS. FAHEY.
S. MAGNER, *Not. Pub.*

A true copy. New Orleans, 14th October, 1867.
[SEAL.] (Signed) S. MAGNER, *Not. Pub.*

[5c. int. rev. stamp affixed and cancelled.]

25 *Exhibit B.—Filed with bill.*

Copartnership between G. T. Beauregard and Messrs. Thomas B. May and A. C. Graham.

Articles of Copart

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that this day, the eighteenth of April, in the year of our Lord eighteen hundred and sixty-six, and in the 90th of American independence, before me, Amedee Ducatel, notary public, duly commissioned and sworn, in and for this city and the parish of Orleans, therein residing, and in presence of the undersigned witnesses, personally came and appeared Mr. Gustave Toutaut Beauregard, residing in this city, of the first part, Mr. Thomas P. May, also of this city, of the second
26 part, and Mr. Augustus C. Graham, residing also in this city, of the third part. Which said appearers declared that, for and in consideration of the mutual credit and faithful confidence that each of them has reposed in the others, and with a view to their mutual advantage and benefit, they have entered into the following articles of agreement:

ARTICLE 1. Gustave Toutaut Beauregard shall obtain in his name, but for the joint account of the appearers, the lease of the "New Orleans and Carrollton railroad;" he shall take charge, conduct, manage, and direct the undertaking, at a salary of five thousand dollars per annum, payable monthly, at the rate of four hundred and sixteen dollars sixty-six cents and two-thirds per month, promising and binding himself to do his best endeavours, to the utmost of his skill and ability, for
27 their mutual advantage; and also he shall have the right to select and appoint his assistants with proper salaries.

ARTICLE 2. The said Thomas P. May and Augustus C. Graham shall furnish the amount of money necessary to carry out the enterprise; which amount shall not exceed one hundred and fifty thousand dollars for each of them, making an aggregate amount of three hundred thousand dollars. The said T. P. May and A. C. Graham shall be reimbursed in capital and interest at the rate of eight per cent. per annum from the annual net profits of the enterprise.

ARTICLE 3. After the payment of said capital and interest as aforesaid, the annual net profits, gains, and increase as shall arise shall be equally divided between the said appearers, share and share
28 alike, and also all losses, as shall happen by bad debts or otherwise, shall be paid and borne equally between them.

ARTICLE 4. The said T. P. May and A. C. Graham promise and bind themselves to pay the above sum of one hundred and fifty thousand dollars, each of them in manner following, to wit: Twenty thousand dollars (each of them) immediately after the signing of the lease by the "New Orleans and Carrollton Railroad Company;" then twenty thousand dollars (each of them) per month during the next four succeeding months; then ten thousand dollars per month, (should they be required by the lessee, G. T. Beauregard,) until final payment of the said sum of one hundred and fifty thousand dollars by each of them.

ARTICLE 5. There shall be kept just and true books of accounts, wherein shall be entered, as well all the money received and ex-

pended in and about the said enterprise, as also all commodities and merchandises bought by reason and on account of the present copartnership between the appearers, and all other matters and things in any wise belonging or appertaining thereto, so that either of them may have free access thereto.

ARTICLE 6. On the first of each month a statement of amounts received and expended during the preceding month shall be furnished to the said Thomas P. May and A. C. Graham by said G. T. Beauregard, who will make his deposits in the First National Bank in this city.

ARTICLE 7. This copartnership shall continue from the date of the lease by the "New Orleans and Carrollton Railroad Company" to the said G. T. Beauregard, for and during and to the full end and term of twenty-five years next ensuing.

ARTICLE 8. In case any of the said copartners shall happen to decease before the expiration of the said term of twenty-five years, the present copartnership shall continue between the surviving copartners and the heirs or assigns of the deceased, under the same charges, clauses, and conditions as above set forth.

And the said parties herein bind themselves, their heirs, executors, and administrators, for the performance of all and every of the above agreements.

Thus done and passed and concluded in my office at New Orleans, the day, month, and year first above written, in presence of Messrs. Henry Ducatel and André Pelaune, competent witnesses, who have signed these presents, together with the said appearers, and me, the notary.

(Signed) T. P. MAY.
A. C. GRAHAM.
G. T. BEAUREGARD.
A. PELAUNE.
HENRY DUCATEL.
AMÉDEÉ DUCATEL, *N. P.*

A true copy from the original.

[SEAL.] (Signed) AMÉDEÉ DUCATEL, *Not. Pub.*

[5c. int. rev. stamp affixed and cancelled.]

Assignment *Exhibit C.—Filed with bill.*

Know all men by these presents that I, Augustus C. Graham, of Flushing, in Queens County, State of New York, of the first part, for and in consideration of the sum of one dollar, to me in hand paid by the Fourth National Bank of the City of New York, of the second part, the receipt whereof is hereby acknowledged, have granted, bargain, sell, assign, transfer, set over, unto the said party of the second part, its successors, and assigns, all the estate, right, title, and interest of and in a certain "indenture of lease" made by the New Orleans and Carrollton Railroad Company to "Gustave Toutaut Beauregard," dated the 12th of April, 1866, and recorded in conveyance office of the parish of Jefferson, in the State of Louisiana, in book II, folio 312, on April 19th, 1866, to which I may be entitled, by virtue of certain articles of copartnership made between said Gustave Toutaut Beauregard and Thomas P. May and myself, bearing date the 18th of April, 1866, or otherwise. And also all my right and interest in any property and effects of said partnership. And also all debts due to me from the said partnership or any other member thereof.

In witness whereof I have hereunto set my hand and seal this 8th day of May, in the year 1867.

(Signed) AUG'S C. GRAHAM.

Signed and delivered in the presence of—
A. A. ALVORD.
B. F. LEE, Jr.
MOSES B. MACLAY.

UNITED STATES OF AMERICA,
State, County, and City of New York, ss:

33 I, Moses B. Maclay, residing in the city of New York, a commissioner in said State to take depositions, affidavits, acknowledgements of deeds, powers of attorney, &c., &c., to be used or recorded in the State of Louisiana, duly commissioned and qualified, do hereby certify and make known that on the day of the date hereof, before me personally appeared "Augustus C. Graham," of the city of New York, known to me to be the person described in and who executed the annexed agreement, and executed the same in my presence, and in the presence of A. A. Alvord and B. F. Lee, jr., witness of lawful age, residing in the said city, who have subscribed the same with me; and the said Augustus C. Graham acknowledged to me that he executed the same as his act and deed for the purpose therein mentioned.

34 In testimony whereof I have hereunto subscribed my name and affixed my seal of office this 8th day of May, 1867.

(Signed) MOSES B. MACLAY,
Louisiana Commissioner in the City of New York.

Parish of Jefferson, the 15th of May, 1867.
(Signed) ERNEST COMMAGERE, *Recorder.*

I, the undersigned, recorder in and for the parish of Jefferson, do hereby certify that the foregoing is a true and correct copy of the registry of an act registered on the 15th of May, 1867, in conveyance office, in book II, folio 812.

In witness whereof I have hereunto set my hand and affixed the seal of my office on this 14th day of October, 1867.

[SEAL.] (Signed) ERNEST COMMAGERE,
Recorder.

[5c. int. rev. stamp affixed and cancelled.]

35 *Subpœna in chancery.—Issued December 3d*, 1867.

United States circuit court.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLTON RAILROAD Company, G. T. Beauregard, and others. } No. 5359.

UNITED STATES OF AMERICA:

The President of the United States of America to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Alexander Bonneval, a citi-

zen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday in January, 1868, then and there to answer to a bill in chancery filed against him and
36 others, wherein the Fourth National Bank of the City of New York, located in said city, and a citizen of the State of New York, is complainant, and said Alexander Bonneval and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 3d day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and the 92d year of American independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday in January, 1868; otherwise the bill may be taken pro confesso.

37 (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return on same.

United States Circuit Court.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLTON RAILROAD Company, G. T. Beauragard, & als.
} No. 5359.—Subpœna in chancery.

Received December 4th, 1867, and on 5th day of same month and year served a copy of the within subpœna in chancery on Alexander Bonneval named herein, personally, at office No. 22½ Carondelet street, in this city.

New Orleans, December 6th, 1867.

(Signed) S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery.—Issued 3d December, 1867.

UNITED STATES OF AMERICA:

38 The President of the United States to the marshal for the district of Louisiana, greeting:

You are commanded to summon G. W. Binder, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday in January, 1868, then and there to answer a bill in chancery filed against him and others, wherein the Fourth National Bank of the City of New York, located in said city, and a citizen of the State of New York, is complainant, and said G. W. Binder and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief Justice of the
39 Supreme Court of the United States of America, this 3d day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and the 92d year of American independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday in January, 1868, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

United States circuit court.

FOURTH NATIONAL BANK OF THE CITY OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD
40 Company, G. T. Beauregard, & als. } No. 5359.

Received December 4th, 1867, and on 5th day of same month and year served a copy of the within subpœna in chancery on G. W. Binder, the defendant named herein, personally, at his office, No. 24 Carondelet street, in this city.

New Orleans, December 5th, 1867.

(Signed) S. W. REED, *D'y U. S. Marshal.*

Subpœna in chancery.—Issued December 3d, 1867.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are commanded to summon G. T. Beauregard, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court
41 to be holden on the first Monday in January, 1868, then and there to answer a bill in chancery filed against him and others, wherein the Fourth National Bank of the City of New York, located in the said city, and a citizen of the State of New York, is complainant, and said G. T. Beauregard and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 3d day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and the 92d year of American independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court
42 on or before the first Monday in January, 1868, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

United States circuit court.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & als.
} No. 5359.

Received December 4th, 1867, and on 5th day of same month and year served a copy of the within subpœna in chancery on the within-named defendant, G. T. Beauregard, personally, at his office No. 44 Carondelet street, in this city.

New Orleans, December 5th, 1867.

(Signed) S. W. REED, *D'y U. S. Marshal.*

43 *Subpœna in chancery.—Issued December 3d*, 1867.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are commanded to summon the New Orleans and Carrollton Railroad Company, represented by L. Millandon, the president thereof, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday in January, 1868, then and there to answer a bill in chancery filed against said company and others, wherein the Fourth National Bank of the City of New York, located in the said city, and a citizen of the State of New York, is complainant, and said New Orleans and Carrollton Railroad Company and others are defendants.

44 Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 3d day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and the 92d year of American independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

The defendant is hereby notified that it is required to enter its appearance in the clerk's office of the United States Circuit Court, on or before the first Monday in January, 1868, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

United States circuit court.

45 FOURTH NATIONAL BANK OF THE CITY of New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & als. } No. 5359.

Received December 4th, 1867, and on 5th day of same month and year served a copy of the within subpœna in chancery on L. Millandon, president New Orleans and Carrollton Railroad Company, the defendant named herein, personally, at their office, 64 Carondelet street, in this city.

New Orleans, December 6th, 1867.

(Signed) S. W. REED, *D'y U. S. Marshal.*

Subpœna in chancery.—Issued December 3d, 1867.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are commanded to summon Joseph Hernandez, a citizen
46 of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday in January, 1868, then and there to answer a bill in chancery filed against him and others, wherein the Fourth National Bank of the City of New York, located in said city, and a citizen of the State of New York, is complainant, and said Joseph Hernandez and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 3d day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and the 92d year of American independence.

47 [SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y C'lk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday in January, 1868, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return.

United States circuit court.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & als. } No. 5359.

Received December 4th, 1867, and on 5th day of same month and

year served a copy of the within subpœna in chancery on Joseph
48 Hernandez, defendant named herein, personally, at his residence, No. 326 Camp street, in this city.

New Orleans, December 5th, 1867.

(Signed) S. W. REED, *D'y U. S. Marshal.*

Entry at rules.—Extract from the chancery order docket.

January rules, 1868.—Monday, 6th.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company & als. } No. 5359.

The defendants A. Bonneval, Joseph Hernandez, and G. W. Binder, by their solicitor, C. Dufour, esq., this day came into the clerk's office and entered their appearance to complainant's bill.

49 *Entry at rules.—Extract from the chancery order docket.*

January rules, 1868.—Monday, 6th.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company & als. } No. 5359.

The defendants G. T. Beauregard and the New Orleans and Carrollton Railroad Company, by their solicitor. L. E. Simonds, esq., entered their appearance to complainant's bill.

Motion and order.—Extract from the minutes.

United States circuit court, fifth circuit and district of Louisiana.—November term, 1867.

NEW ORLEANS, *Wednesday, April 8th*, 1868.

50 Court met pursuant to adjournment. Present: Hon. E. H. Durell, district judge.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company & als. } No. 5359.

On motion of C. Dufour, solicitor for A. Bonneval, Joseph Hernandez, and G. W. Binder, and of L. E. Simonds, solicitor for G. T. Beauregard and the New Orleans and Carrollton Railroad Company, and upon suggesting to the court that a correspondence is in progress between the United States district attorney and the Treasury Department at Washington, for the purpose of ascertaining the views of the government

and securing the proofs necessary to vindicate the rights of the government in the assignment of the property now claimed by the com-
51 plainants; and upon further representing that, notwithstanding all due and proper diligence, and from causes no doubt of sufficient importance to the authorities at Washington, no definite answer has yet been received whereby the defendants could prepare their answer, it is ordered by the court that the time for answering herein be further extended to the first Monday of May next.

Answer of Alexander Bonneval, Joseph Hernandez, and G. W. Binder.—Filed May 2d, 1868.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD, and G. T. Beauregard, and A. Bonneval, and others. } No. 5359.

52 In the circuit court of the United States.

Alexander Bonneval, Joseph Hernandez, and G. W. Binder, defendants, expressly excepting to the uncertainties of some of the averments charged against them in the bill of complaint filed by the complainant, now proceed to make answer thereto as follows, viz:

1. They admit that on the 12th day of April, 1866, a contract of lease was passed between G. T. Beauregard on the one part, and the New Orleans and Carrollton Railroad Company on the other, in manner and form such as is described in exhibit marked "A," annexed to the bill of complaint.

2. They further admit that on the 18th day of April, 1866, the said G. T. Beauregard entered into a contract with Thomas P. May and Augustus C. Graham in manner and form and for the purposes such as are fully set forth in exhibit marked "B," annexed to the bill of complaint. But they aver and maintain that the interest of the said
53 Augustus C. Graham in the aforesaid contract remained purely nominal, as he failed to make the payments stipulated in his name, and in fact no consideration ever passed from him under the said contract.

3. They aver and maintain that if it be true the alleged interest of Augustus C. Graham in and to the business and contract aforesaid was by him assigned to the complainant, as declared in his bill, to be secured to him by the exhibit marked "C," no rights validly passed to and none were vested in said complainant. They aver and maintain that the said Augustus C. Graham was entitled to no reimbursement of capital, as none has been invested by him in the business and contract aforesaid; that he never made any payment such as he had agreed to; that every dollar apparently paid by the said Augustus C. Graham under and in pursuance of the aforesaid contract was in truth and in fact paid
54 by Thomas P. May, who alone furnished all the funds required under the contract aforesaid; and although it would appear from the aforesaid exhibit marked "B," relied upon by the complainant, that the said Augustus C. Graham was the owner of one-third part and interest in the business and contract above referred to, yet in truth the said Thomas P. May was the real owner of the interest standing appa-

rently in the name of the said Augustus C. Graham, and he and the said G. T. Beauregard were the sole owners of the whole interest, in the proportion of two-thirds part for himself and of one-third part for the said G. T. Beauregard. And so the said Augustus C. Graham, having no right or interest in the matter afore described, could not pass any to the complainant, such as is set forth in the bill of complaint.

4. They aver and maintain that if the said Aug. C. Graham
55 had any right which he could assign, as set forth in the exhibit marked C, such assignment was an inchoate and imperfect transfer, and does not operate in law a valid removal of rights from the said Augustus C. Graham to the complainant in this, viz: 1st. The said assignment has not been notified to the partnership or company formed as per Exhibit B; no notice of the same was in any form or manner served at the seat of said company or partnership. 2d. The said assignment was not recorded in the mortgage office of the parish where the seat of the company or partnership is located. 3. The alleged interest of Augustus C. Graham, which the said assignment purports to convey, consists both in moveable and immovable property; and yet no mention is made of the particulars, no specification as
56 to the various properties, and no description of the real estate, a formality which is indispensable under the law to form a valid transfer.

5. They aver and maintain that the said assignment was made solely to secure a balance of about $45,757, supposed to be due either from the First National Bank of New Orleans or Augustus C. Graham to the complainant; that since the execution of the assignment a sum of $25,800 has been appropriated to the payment pro tanto of the said debt; that ample means were provided for the payment of the remaining balance, such as $15,720 in coupons of bonds of the city of New Orleans, and exchange on England to the amount of over £10,000 sterling. So that the claim of the complainant, for the security of which the said assignment was made by Augustus C. Graham, has been satisfied and extinguished, and the alleged rights of the complainant under the said assignment terminated.

6. They admit that they have been put in possession of the
57 entire interest originally held by both Augustus C. Graham and Thomas P. May, in the lease and contract aforesaid, and in the business carried on in pursuance of the same, and they aver and maintain that they are the rightful owners of the same by virtue of a bona fide conveyance executed by the United States to these defendants on the 31st day of October, 1867, as is more fully and particularly set forth in the exhibit marked No. 1, hereunto annexed and made a part of this answer. They further aver that by this conveyance they have acquired, for a good and valuable consideration, truly paid as therein stated, all the rights, titles, and interests of every nature and kind of the United States in and to the following described property, to wit: 1st. The lease of the New Orleans and Carrollton Railroad Company, originally made by G. T. Beauregard. 2dly. The contract of copartnership
58 entered into between the said G. T. Beauregard, and Thomas P. May, and Augustus C. Graham, fully described elsewhere. 3dly. And all the real estate belonging to said copartnership and particularly described in the said conveyance.

7. And they aver that the rights, titles, and interest hereinbefore described, so vested in them by the United States as aforesaid, were transferred and passed to the United States in legal form, and by valid title, from Thomas P. May, acting for himself and for Augustus C.

Graham, as is fully set forth in the two exhibits marked No. 2 and No. 3, the one executed on the 14th of May, 1867, and the other on the 16th of May, 1867, both of which are hereunto annexed, and made a part of this answer. So that in manner aforesaid the interest unduly claimed by the complainant was legally transferred to the United States, and was subsequently vested by the United States in these defendants.

59 And in this connection it was specially declared on the part of the United States, that, whereas a certain document, purporting to be a transfer of rights from Augustus C. Graham to the Fourth National Bank of New York, was signed, sealed, and delivered by the said A. C. Graham on the 8th day of May, 1867, and although expressly denying the legality, validity, and effect of said document by reason of such circumstances, the government of the United States promised and covenanted to warrant and protect these defendants against the said document, and the effects thereof.

8th. And finally, to the best of the knowledge and belief of these defendants they aver that there is no other matter in the complainant's bill contained, material in law, for these defendants to make answer to, and not hereinbefore well and sufficiently answered and traversed,

60 all of which these defendants are ready to maintain as this honorable court shall direct, and they pray to be herein dismissed with all costs and charges in law in this behalf most wrongfully sustained.

(Signed) CYPRIEN DUFOUR, *Solicitor.*

A. Bonneval, Jas. Hernandez, and G. Binder, being duly sworn, say that the foregoing answer is true.

(Signed) J. HERNANDEZ.
" ALEX. BONNEVAL.
" G. W. BINDER.

Sworn to and subscribed, May 2d, 1868, before me.

(Signed) F. B. VINOT, *D'y Clerk.*

Exhibit No. 1.—Filed with and referred to in foregoing answer.—Sale.—United States of America to Alexander Bonneval, George Binder,

61 *and Joseph Hernandez.*

(Indorsed:) Ne varietur with an act of deposit.
New Orleans, 7th December, 1867.

S. MAGNER, *Not. Pub.*

In consideration of the sum of two hundred and eighty-eight thousand dollars, paid to the United States by Alexander Bonneval, Joseph Hernandez, and George Binder, of the city of New Orleans, parish of Orleans, and State of Louisiana, the said United States, by Edward Jordan, Solicitor of the Treasury, acting herein with the approval of the Secretary of the Treasury, in pursuance of the authority conferred on him, the said Solicitor of the Treasury, by an act of Congress entitled "An act to provide for the appointment of a Solicitor of the Treasury," approved May 29th, 1830, and by the 9th section of an act entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes," approved March 3d, 1863, hereby

62 sell, assign, transfer, convey, release, and quitclaim unto the said Alexander Bonneval, Joseph Hernandez, and George Binder, in the proportion of one undivided third part to each, and to their and

each of their heirs and assigns, all and singular the rights, titles, interest, shares, claims, and demands of every nature and kind whatever of the United States, of, in, and to the following described property, to wit:

1st. The lease of the New Orleans and Carrollton railroad, and other franchises thereof, and the railroad tracks, rolling stock, engines, cars, live stock, and other appurtenances thereunto belonging, or in any wise appertaining.

2d. The copartnership entered into between Thomas P. May, Augustus C. Graham, and Gustave Toutaut Beauregard, for the purpose of conducting the business of the said railroad, by an act passed before A. Ducatel, a notary in said city, on the eighteenth day of April,
63 one thousand eight hundred and sixty-six; which said act of copartnership is referred to for a more particular and detailed statement and description of the property, franchises, rights, privileges, and interest thereby and hereby affected, and which said lease was obtained by the said G. T. Beauregard, as per act of lease in the premises, passed before S. Magner, a notary in said city, on the twelfth day of April, one thousand eight hundred and sixty-six, which said act of lease is also referred to for greater certainty.

3d. And the real estate hereinafter described, to wit:

1st. A certain square of ground, with all the buildings, improvements, rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, situate in the city of Jefferson, parish of Jefferson, in the State of Louisiana, designated by the number sixty-six, on a
64 lithographic plan deposited in the office of Adolphe Mazureau, a notary, in the city of New Orleans. The said square comprised between Nayades, Appollo, Milan, and Berlin streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive.

II. A certain square of ground, together with the improvements thereon, and all the rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situate in the city of Jefferson, parish of Jefferson, in said State of Louisiana, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades, and Appollo streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive, in conformity with a lithographic plan deposited in the office of Adolphe Mazureau, a notary, in said city of New Orleans.

III. A certain piece or portion of land, situate in the town of
65 Carrollton, parish of Jefferson, in said State, being a triangular bounded by Levee street, Carrollton avenue, and First street, and measuring, more or less, five hundred and eighteen feet front on Carrollton avenue, six hundred and eleven feet two inches and one and a half line front on First street, and seven hundred and ninety-eight feet four inches front on Levee street, together with all the buildings and improvements thereon, and appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging.

IV. Seven certain lots of ground, situate in the first district of said city of New Orleans, in the square bounded by St. Charles, Felicity, Appollo, or Carondelet, and Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven, on a plan deposited in the office of S. Magner, a notary in said city, as plan number
66 one hundred and sixteen, according to which plan said lots measure as follows, to wit: Lot No. one, thirty-six feet nine inches front on St. Charles street, by a depth of ninety-four feet, between parallel lines. Lots two, three, four, and five, immediately in the rear of

said lot No. one, adjoin each other, and measure together about one hundred and thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch on the line nearest to St. Charles street, and contiguous to the rear line of lot No. one, about eighty-two feet six inches on the side nearest to Apollo street, (now Carondelet,) and about one hundred and twenty-seven feet nine inches in the rear. And lots six and seven, adjoining each other, and extending back to the rear line of the lots fronting on Felicity street, measure each thirty-one feet eleven inches and five lines front on Polymnia street, by a depth of one hundred and twenty feet, between parallel lines. Together
67 with all and singular the buildings and improvements thereon, and appurtenances thereof, known as the "Horse Station," and all the rights, ways, servitudes, privileges, and advantages thereunto belonging, or in any wise appertaining; which said real estate was acquired for the use and account of the aforesaid copartnership, as the books thereof will show, by four different purchasers, to wit: One from S. A. Kohn, by act passed before A. Ducatel, a notary in the city of New Orleans, on the 30th day of April, one thousand eight hundred and sixty-six; another from William C. Raymond, by act passed before the same notary, on the fifth day of May, one thousand eight hundred and sixty-six; the third from the New Orleans and Carrollton Railroad Company by act passed before S. Magner, a notary in said city of New
68 Orleans, on the twenty-ninth day of June, one thousand eight hundred and sixty-six; and the fourth and last from the same company, by act passed before the same notary, on the fifteenth day of January, one thousand eight hundred and sixty-seven.

The interest in the above-described property intended to be hereby conveyed being the same which was acquired by the United States from Thomas P. May and Augustus C. Graham, by act passed before Andrew Hero, jr., a notary in the city of New Orleans, on the sixteenth day of May, one thousand eight hundred and sixty-seven, together with all the rights, titles, interest, claims, and demands of the United States of, in, and to said property, rights, franchises, and privileges, from whatsoever source acquired, to have and to hold the hereinabove conveyed rights, titles, interest, shares, claims, and demands of the United States
69 in and to the above-described property unto the said Alexander Bonneval, Joseph Hernandez, and George Binder, their heirs, and assigns, forever; reserving, nevertheless, on behalf of the United States, the vendor's privilege granted by the laws of Louisiana to secure the payment of two promissory notes made by said Alexander Bonneval, Joseph Hernandez, and George Binder, to the order of, and endorsed by, F. A. Ducros, L. E. Lemarie, and John Dolhoude, and dated August 20th, 1867, one for the sum of one hundred thousand dollars, at three months, and one for the sum of eighty-eight thousand dollars, at six months after date; said notes having been given to the United States in payment of a portion of the purchase-money of the property herein-above described.

70 In witness whereof the said Solicitor of the Treasury hath, in behalf of the United States, hereunto set his hand and affixed his official seal this thirty-first day of October, in the year one thousand eight hundred and sixty-seven.

[SEAL.] (Signed) EDWARD JORDAN,
Solicitor of the Treasury.

Signed, sealed, and delivered in presence of—
J. M. McKINNEY.
THOMAS DUTTON.

DISTRICT OF COLUMBIA, *City and County of Washington, ss:*

Be it remembered that on the thirty-first day of October, in the year one thousand eight hundred and sixty seven, before me, the undersigned, a commissioner resident in the District of Columbia, duly commissioned and qualified by the executive authority, and under the laws of the State of Louisiana, to take the acknowledgment of deeds, &c., to
71 be used or recorded therein, personally appeared Edward Jordan, Solicitor of the Treasury of the United States, to me known to be the individual named in, and who executed, the annexed instrument, and acknowledged to me that he did sign, seal, and deliver the same as his free act and deed, on behalf of the United States, on the day and year therein mentioned, and for the consideration, uses, and purposes therein expressed.

In witness whereof I have hereunto set my hand, and affixed my official seal, the day and year aforesaid.

[SEAL.] (Signed) N. CALLAN,
Commissioner for Louisiana in the District of Columbia.

Registered, (extract,) conveyance office, B. 93, fo. 462.
New Orleans, 9th December, 1867.
[SEAL.] (Signed) F. ST. AMAND, *D'y R.*

STATE OF LOUISIANA, *City of New Orleans:*

72 I, Selim Magner, a notary public, duly commissioned and sworn, in and for the parish of Orleans, do hereby certify the foregoing to be a true copy of the original document annexed to an act of deposit in my office, under date of the seventh day of December, 1867.

In witness whereof I grant these presents, under my signature and the impress of my seal of office, at New Orleans aforesaid, on this twenty-fourth day of April, 1868.

[SEAL.] (Signed) S. MAGNER, *Not. Pub.*

[5c. int. rev. stamp affixed and cancelled.]

Exhibit No. 2.—Filed with the foregoing answer.—Assignment by T. P. May to the United States of America.

STATE OF LOUISIANA, *Parish and City of New Orleans:*

Be it known that on this fourteenth day of May, in the year
73 of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the ninety-first, before me, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Thomas P. May, of this city, who declared that, in consideration of the sums of money due by him to the United States of America, the exact amount of which is to be ascertained upon an adjustment of his account with said United States, he does by these presents, in part payment of said indebtedness, cede, transfer, assign, and set over, with all legal warranties, unto the said United States of America, represented herein by John Jay Knox, special
74 agent of said United States of America, and here present, and accepting for the said United States, the property, whether real, personal, or mixed, hereinafter mentioned and referred to, viz:

Cash in the First National Bank of New Orleans, three hundred and fifteen thousand seven hundred and seventy-nine dollars..... $315,779 00

The steamer Virgin, valued at the sum of seventy-five thousand dollars	75,000 00
Three lots of ground, situate at the corner of Canal and Marais streets, together with the buildings thereon, purchased by said May from Geo. Ruleff, by act before Jas. Graham, notary, on the second of August, 1865, which real estate, with the household furniture on the premises, is hereby valued at fifty thousand dollars	50,000 00
I. O. Nixon's promissory note, dated April 25, 1867, made to his own order, for the sum of twenty-five thousand dollars	25,000 00
Fourteen hundred and ten shares, of one hundred dollars each, in the capital stock of the First National 75 Bank of New Orleans, valued at one hundred and forty-one thousand dollars	141,000 00
A certain plantation, situate in the parish of St. Charles, in this State, known as the "Payne plantation," the same being the property of said May, although the title thereto is in the name of A. C. Graham, as per his act of purchase thereof, passed before A. Mazureau, a notary in this city, on the sixth of February, 1866, said plantation being valued at forty-four thousand dollars	44,000 00
The interest of said May in and to the Carrollton Railroad Company, and the property, stock, and appurtenances thereto belonging, the value of which is estimated at the sum of four hundred and eighty thousand dollars	480,000 00
The interest of said May in commission business in this city, which is valued at sixty-six thousand dollars	66,000 00
	1,196,779 00

The estimated value of the property, so ceded and transferred,
76 the sum of one million one hundred and ninety-six thousand seven hundred and seventy-nine dollars.

And the said Thomas P. May hereby promises and binds himself, without necessary delay to sign and execute all acts, or other instruments of writing, that may be requisite and necessary to give to the United States of America, or their assigns, full, complete, and valid titles to the property herein transferred; to have and to hold the real and personal property aforesaid unto the United States of America or their assigns forever. And the said May furthermore binds himself personally, and as the agent and attorney in fact of the persons interested with him in the property herein referred to and hereby transferred, not to alienate or encumber the same to the prejudice of these presents.

This done and passed in my office at New Orleans aforesaid, in the presence of Samuel H. Torrey and James Graham, competent witnesses, both of this city, who hereunto sign their names, with the parties,
77 and me, the said notary, the day and date aforesaid.

(Original signed) T. P. MAY.
JOHN JAY KNOX.
SAM'L H. TORREY.
JAS. GRAHAM.
ANDREW HERO, JR., *Not. Pub.*

Registered, conveyance office, book 92, fo. 460.
New Orleans, 16th May, 1867.

ROBERT B. STILLE, *Register.*

Registered B. II, fo. 817, Jefferson Parish.

I certify the foregoing copy of the original act (duly stamped as an assignment) on file and of record in my office.
New Orleans, April 24, 1868.

[SEAL.] ANDREW HERO, JR., *Not. Pub.*

[5c. int. rev. stamp affixed and cancelled.]

Exhibit No. 3.—Filed with the foregoing answer.—Assignment of
78 *lease by Thomas P. May and Augustus C. Graham, to United States of America.*

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known that on this sixteenth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the ninety-first, before me, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Thomas P. May, of this city, herein acting as well for himself personally as in his capacity as the duly authorized agent and attorney in fact of Augustus Clason Graham, formerly of this city, but now a resident of the city and State of New York, by
79 virtue of his power of attorney to said May, executed under private signature, dated at said city of New York on the twenty-ninth day of September, 1866, and annexed for reference to an act of agreement executed between said Augustus Clason Graham and Charles Hodges, before T. O. Stark, a notary in this city, on the 23d day of October, 1866, which said May declared in his said several capacities that for the consideration and on the terms and conditions hereinafter expressed he does by these presents cede, transfer, assign, and set over unto the United States of America, represented herein by John J. Knox, the duly appointed and authorized special agent of the United States of America, he being here also present, and in his said capacity, accepting for the United States of America and their assigns, and acknowledging
80 delivery and possession thereof, all and singular the right, title, interest, share, property, claim, and demand of every nature and kind whatever of them, the said Thomas P. May and Augustus Clason Graham, and of each of them, in and to the New Orleans and Carrollton railroad, the lease and other franchises thereof, and the railroad tracks, rolling stock, engines, cars, live stock, and other appurtenances thereunto belonging or in any wise appertaining, the same having been acquired by the said May and Graham, by the provisions of certain articles of copartnership entered into between them and Gustave Toutaut Beauregard, for the purpose of conducting the business of the said railroad, by an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April, one thousand, eight hundred and sixty-six, by which said act of copartnership, the said parties thereto became interested in the proportions of one-third part and interest each,
81 in the lease and other franchises of the said railroad, the railroad tracks, engines, cars, stock, and other appurtenances thereof, and

which said lease was obtained by the said Beauregard for the joint account of himself and the said May and Graham, as per the act of lease in the premises, passed before S. Magner, a notary in this city, on the twelfth day of April, one thousand, eight hundred and sixty-six; all relative to which will more fully appear by the provisions of the herein-before referred to acts of lease and copartnership, to which reference is hereby made. But here the said Thomas P. May declared, that although it would appear from the premises that the said Graham was a bona fide owner of one-third part and interest in the lease of said railroad and appurtenances, yet in truth and in fact he, the said
82 May, was the owner of the interest therein which appears in the name of the said Graham, and the owner, with the said Beauregard, of the whole of the said lease and appurtenances, in the proportions of two-thirds part and interest for himself, and of one-third part and interest for the said Beauregard. To have and to hold the said right, title and interest unto the said purchasers, their heirs and assigns, forever. And the said Thomas P. May, as well for himself, individually, as in his capacity as agent of the said Augustus Clason Graham, hereby binds himself and his heirs, and also binds the said Augustus Clason Graham and his heirs, to warrant, and forever to defend the right, title, and interest herein transferred against all legal claims and demands. The said Thomas P. May, personally, as in his capacity as agent of said Graham as aforesaid, hereby transfers to the said purchaser all the rights and actions of warranty, to which he himself or the said
83 Graham is entitled, against all persons or bodies corporate interested or concerned in the premises, subrogating the said purchaser to the said rights and actions, to be by them enjoyed and exercised in the same manner as they might have been by the said copartnership themselves, the said May and Graham, or either of them. This sale is made for and in consideration of the price and sum of four hundred and eighty thousand dollars, the same being the estimated value of the two-thirds part and interest in said railroad and lease herein transferred, which said consideration is made payable as follows, to wit:

Whereas the said Thomas P. May is indebted unto the United States of America in the sum of about one million and forty thousand dollars, the precise amount of the said indebtedness to be hereafter determined:

84 Now in settlement and liquidation of said consideration, the said John Jay Knox, the agent aforesaid, hereby and in his said capacity, grants the said Thomas P. May an acquittance and discharge for so much of the said price as may enure to or be received by the United States of America from the proceeds of the sale or other disposition of said interest. This act is executed in confirmation of the act of transfer of the said right, title, and interest in said railroad, and the said lease thereof, and of other property, real and personal, belonging to the said Thomas P. May, passed before the undersigned notary, on the fourteenth day of May, one thousand eight hundred and sixty-seven.

Thus done and passed in my office at New Orleans aforesaid, in the presence of James Graham and George Cenas, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid,

85 (Original signed) T. P. MAY.
JOHN JAY KNOX.
GEO. CENAS.
JAS. GRAHAM.
ANDREW HERO, JR.,
Not. Pub.

Registered, conveyance office, book 92, fo. 465.
New Orleans, 17th May, 1867.

ROBERT B. STILLE, *Register.*

Registered B. "II," fo. 819, parish of Jefferson.

I certify the foregoing to be a true copy of the original act (duly stamped $65 00) on file and of record in my office.
New Orleans, La., April 24th, 1868.
[SEAL.] (Signed) ANDREW HERO, JR.,
Not. Pub.

[5c. int. rev. stamp affixed and cancelled.]

Entry at rules.—Extract from the chancery order docket.

May rules, 1868.—Monday, 4th.

86 FOURTH NATIONAL BANK OF THE CITY of New York *vs.* NEW ORLEANS AND CARROLLTON RAILROAD Company & als. } No. 5359.

The complainant is hereby notified that on the 2d of May instant, the defendants, Alexander Bonneval, Joseph Hernandez, and G. Binder, by their solicitor, C. Dufour, have filed their answer to complainant's bill.

Answer of the New Orleans and Carrollton Railroad Company.—Filed May 4th, 1868.

United States Circuit Court for the fifth circuit, district of Louisiana.—In chancery.

FOURTH NATIONAL BANK OF THE CITY OF New York *vs.* NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & al. } No. 5359.

87 The answer of the New Orleans and Carrollton Railroad Company, by G. T. Beauregard, president, one of the defendants, to the bill of complaint of the Fourth National Bank of the City of New York, complainant.

This defendant now and hereafter reserving to himself the benefit of exception to the many uncertainties and insufficiencies in the averments and charges of complainant in his bill of complaint contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised is material or necessary for him to make answer unto, this defendant, answering, saith:

This defendant knows nothing of the incorporation, domicil, or citizenship of complainant. He admits the execution of the contract of lease set forth in Exhibit A, annexed to the bill of complaint.

He admits the execution of the agreement as set forth in Ex-
88 hibit B, annexed to the bill of complaint.

This defendant knows nothing of the alleged assignment by Augustus C. Graham to complainant, set forth in Exhibit C, and calls for strict proof thereof, so far as the same may affect this defendant. This defendant specially denies any confederation or combination on his part to deprive the complainant of any interest he might have under

the said alleged transfer. He denies that he has taken possession of any interest of complainant in the lease or copartnership described in the bill of complaint.

He denies that the said Graham did actually make the payments as stipulated in the said articles of partnership. And this defendant avers that he has answered herein every matter contained in complainant's bill of complaint that he is advised is material or necessary for this defendant to make answer unto. Wherefore he humbly prays to be
89 hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained.

(Signed) G. T. BEAUREGARD, *President.*
(Signed) L. E. SIMONDS, *Solicitor.*

G. T. Beauregard, being duly sworn, declares that the foregoing answer is true.

(Signed) G. T. BEAUREGARD.

Sworn to and subscribed, May 4th, 1868, before me
(Signed) F. B. VINOT, *D'y Clk.*

Answer of G. T. Beauregard.—Filed May 4th, 1868.

United States circuit court for the fifth circuit, district of Louisiana.—In chancery.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & al.
No. 5359.

90 The answer of G. T. Beauregard, one of the defendants, to the bill of complaint of the Fourth National Bank of the city of New York, complainant.

This defendant now and hereafter reserving to himself the benefit of exception to the many uncertainties and insufficiencies in the averments and charges of complainant in his bill of complaint contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised is material or necessary for him to make answer unto, this defendant, answering, saith:

This defendant knows nothing of the incorporation, domicil, or citizenship of complainant. He admits that himself and co-defendants are citizens of the State of Louisiana. He admits the execution of the contract of lease set forth in Exhibit A, annexed to the bill of complaint.

He admits the execution of the agreement as set forth in Exhibit
91 B, annexed to the bill of complaint.

This defendant knows nothing of the alleged assignment by Augustus C. Graham to complainant, set forth in Exhibit C, and calls for strict proof thereof, so far as the same may affect this defendant.

This defendant specially denies any confederation or combination on his part to deprive the complainant of any interest he might have under the said alleged transfer. He denies that he has taken possession of any interest of complainant in the lease or copartnership described in the bill of complaint. He denies that the said Graham did actually make the payments as stipulated in the said articles of partnership.

And this defendant avers that he has answered herein every matter contained in complainant's bill of complaint that he is advised is
92 material or necessary for this defendant to make answer unto. Wherefore he humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf wrongfully sustained.

(Signed) G. T. BEAUREGARD.
(Signed) L E. SIMONDS, *Solicitor.*

G. T. Beauregard, being duly sworn, declares that the foregoing answer is true.

(Signed) G. T. BEAUREGARD.

Sworn to and subscribed, May 4th, 1868, before me.
(Signed) F. B. VINOT, *D'y Cl'k.*

Entry at rules.—Extract from the chancery order docket.

May rules, 1868.—Monday, 4th.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAIL-
93 road Company, G. T. Beauregard, & al. } No. 5359.

The complainant is hereby notified that the New Orleans and Carrollton Railroad Company, and G. T. Beauregard, by their solicitor, L. E. Simonds, esq., have this day filed their separate answers to complainant's bill.

Replication of complainant.—Filed May 29th, 1868.

United States circuit court for the fifth circuit, holding sessions in the district of Louisiana.—In chancery.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD
Company, and G. T. Beauregard, and others. } No. 5359.

The replication of the Fourth National Bank of New York, com-
94 plainant in the above suit, to the answers of the New Orleans and Carrollton Railroad Company, and G. T. Beauregard, Alexander Bonneval, Joseph Hernandez, and George Binder, defendants.

This replicant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereunto, saith:

That the complainant doth and will aver, maintain, and prove the said bill of complaint to be true, certain, and sufficient in law to be answered unto by the said defendants, and that the answers are very uncertain, evasive, and insufficient in law to be replied unto by the replicant; without that, that any other matter or thing in the said answers contained material or effectual in law to be replied unto, and
95 herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All of which matters and things this replicant is ready to aver, maintain, and prove as this hon.

court shall direct, and humbly prays as in and by the original bill hath been already prayed, &c., &c., &c.

(Signed) ELMORE & KING,
Solicitors for Compl't.

Entry at rules.—Extract from the chancery order docket.

June rules, 1868.—Monday, 1st.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company & als. } No. 5359.

The complainant has, on the 29th of May, 1868, filed replication
96 to the answers of the defendants herein.

Complainant's affidavit for a commission.—Filed June 12th, 1868.

United States circuit court for the fifth circuit, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, and Beauregard, and others. } No. 5359.—In chancery.

W. W. King being duly sworn, states that he is solicitor and attorney for the complainants in the above suit, who are absent from the State. That he is informed and believes that P. C. Calhoun, Phillip Seaman, and Augustus C. Graham, who reside in the city of New York, are material witnesses on behalf of the complainants, without whose testimony they cannot safely go to trial.

97 Wherefore a commision is prayed for, to be directed to William S. Opdyke, or William Peet, or Charles T. Middlebrook, or to W. H. Boughton, to take the testimony of said witnesses in answer to the interrogatories filed.

(Signed) WM. W. KING.

Sworn to and subscribed before me this 12th June, 1869.
(Signed) F. B. VINOT, *D'y Clk.*

Motion and order for a commission.—Extract from the minutes of Friday, June 12th, 1868.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & als. } No. 5359.

98 On motion of Elmore & King, solicitors for complainants, and on filing affidavit, ordered that a commission issue to William S. Opdyke, or to Wm. Peet, or to Charles L. Middlebrook, or to W. H. Boughton, in the city of New York, to take the answers of the witnesses named in the interrogatories now filed, and that the same be made returnable on or before the first Monday of October next.

Notice to cross-interrogatories.—Issued June 12th, 1868.

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, et als. } No. 5359.

To L. E. Simonds, esq., attorney for New Orleans and Carrollton Railroad Company, & G. T. Beauregard:

99 Take notice that the complainants have this day filed interrogatories to witnesses residing in the city of New York, copy whereof accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's office, New Orleans, 12th June, 1868.

[SEAL.] (Signed) F. B. VINOT, *D'y Clk.*

Marshal's return.

United States circuit court.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

100 Received, June 13th, 1868, by the U. S. marshal, and on same day of June, 1868, served copy of within notice, interrogatories accompanying same, on L. E. Simonds, attorney named herein, in hands of Charles Boisblanc, clerk, at office, 14 Exchange Place, in this city.

New Orleans, June 15th, 1868.

(Signed) H. FIELD, *D'y U. S. Marshal.*

Notice to cross-interrogatories.—Issued June 12th, 1868.

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & als. } No. 5359.

To C. Dufour, esquire, attorney for Alex. Bonneval, Joseph Hernandez, and G. Binder:

101 Take notice that the complainants have this day filed interrogatories to witnesses residing in the city of New York, copy whereof accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's Office, New Orleans, June 12th, 1868.

[SEAL] (Signed) F. B. VINOT, *D'y Clk.*

Marshal's return.

United States circuit court.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD CO. & ALS. } No. 5359.

Received, June 13th, 1868, by the U. S. marshal, and on 15th day of June, 1868, served copy of within notice, interrogatories accompanying same, on C. Dufour, attorney named herein, personally, at office, 81
102 Bienville street, in this city.
New Orleans, June 16th, 1868.
(Signed) H. FIELD, *D'y U. S. Marshal.*

Complainant's commission.—Issued June 30th, 1868; returned and filed 11th August, 1868.

Circuit court of the United States for the fifth judicial district, holding sessions in and for the district of Louisiana.

To William S. Opdyke or [or] to William Peet or to Charles L. Middlebrook or to W. H. Boughton, in the City of New York:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you P. C. Calhoun, Phillip Seaman, and Augustus C. Graham, witnesses residing in New York, and them duly examine on the annexed interrogatories on oath touching and concerning
103 certain matters and things in a case now depending in the said court, wherein the Fourth National Bank of New York is the complainant, and the New Orleans and Carrollton Railroad Company, and G. T. Beauregard and others, are defendants, and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 30th day of June, anno Domini 1868, and the 92d year of the independence of the United States of America.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

104 *Interrogatories propounded by complainant, and filed 12th June, 1868, and annexed to foregoing commission.*

United States circuit court for the fifth circuit and district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD,
G. T. Beauregard, and others.

Interrogatories propounded to P. C. Calhoun, Phillip Seaman, and Augustus C. Graham, witnesses residing in New York, whose testimony is taken by virtue of the commission issued in the above-entitled case in behalf of the complainants.

Interrogatories propounded to P. C. Calhoun and Phillip Seaman:

105 Interrogatory 1st. Have you any connection with the Fourth National Bank of New York? If yea, please state what it is.

Notice to cross-interrogatories.—Issued June 12th, 1868.

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, et als. } No. 5359.

To L. E. Simonds, esq., attorney for New Orleans and Carrollton Railroad Company, & G. T. Beauregard:

99 Take notice that the complainants have this day filed interrogatories to witnesses residing in the city of New York, copy whereof accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's office, New Orleans, 12th June, 1868.

[SEAL.] (Signed) F. B. VINOT, *D'y Clk.*

Marshal's return.

United States circuit court.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

100 Received, June 13th, 1868, by the U. S. marshal, and on same day of June, 1868, served copy of within notice, interrogatories accompanying same, on L. E. Simonds, attorney named herein, in hands of Charles Boisblanc, clerk, at office, 14 Exchange Place, in this city.

New Orleans, June 15th, 1868.

(Signed) H. FIELD, *D'y U. S. Marshal.*

Notice to cross-interrogatories.—Issued June 12th, 1868.

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & als. } No. 5359.

To C. Dufour, esquire, attorney for Alex. Bonneval, Joseph Hernandez, and G. Binder:

101 Take notice that the complainants have this day filed interrogatories to witnesses residing in the city of New York, copy whereof accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's Office, New Orleans, June 12th, 1868.

[SEAL] (Signed) F. B. VINOT, *D'y Clk.*

Marshal's return.

United States circuit court.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD CO. & ALS. } No. 5359.

Received, June 13th, 1868, by the U. S. marshal, and on 15th day of June, 1868, served copy of within notice, interrogatories accompanying same, on C. Dufour, attorney named herein, personally, at office, 81
102 Bienville street, in this city.
New Orleans, June 16th, 1868.
(Signed) H. FIELD, *D'y U. S. Marshal.*

Complainant's commission.—Issued June 30th, 1868; returned and filed 11th August, 1868.

Circuit court of the United States for the fifth judicial district, holding sessions in and for the district of Louisiana.

To William S. Opdyke or [or] to William Peet or to Charles L. Middlebrook or to W. H. Boughton, in the City of New York:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you P. C. Calhoun, Phillip Seaman, and Augustus C. Graham, witnesses residing in New York, and them duly examine on the annexed interrogatories on oath touching and concerning
103 certain matters and things in a case now depending in the said court, wherein the Fourth National Bank of New York is the complainant, and the New Orleans and Carrollton Railroad Company, and G. T. Beauregard and others, are defendants, and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 30th day of June, anno Domini 1868, and the 92d year of the independence of the United States of America.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

104 *Interrogatories propounded by complainant, and filed 12th June, 1868, and annexed to foregoing commission.*

United States circuit court for the fifth circuit and district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD,
G. T. Beauregard, and others.

Interrogatories propounded to P. C. Calhoun, Phillip Seaman, and Augustus C. Graham, witnesses residing in New York, whose testimony is taken by virtue of the commission issued in the above-entitled case in behalf of the complainants.

Interrogatories propounded to P. C. Calhoun and Phillip Seaman:

105 Interrogatory 1st. Have you any connection with the Fourth National Bank of New York? If yea, please state what it is.

Interrogatory 2d. Is the Fourth National Bank of New York, the complainant, an incorporated company? If yea, please annex to your answers the evidence of incorporation.

Interrogatory 3d. Did the Fourth National Bank at any time have a transaction with Augustus C. Graham, by which he sold or conveyed to the bank his interest in the New Orleans and Carrollton Railroad Company? If yea, please state when the said conveyance was made to the bank. Have you in your possession the original conveyance? If yea, please state whether the same is a genuine document, and the signatures attached thereto the genuine signatures of the parties.

Interrogatory 4th. At the time the said Graham made the
106 conveyance of his interest in the railroad to the bank, did the bank receive the same in good faith, and under the belief that Graham was the bonâ fide owner of the interest he conveyed to the bank?

(Signed) ELMORE & KING,
Solicitors for Complainant.

Interrogatories to Augustus C. Graham:

Interrogatory 1st. Did you at any time transfer or convey to the Fourth National Bank of New York your interest in the New Orleans and Carrollton Railroad Company? If yea, state when you did so. Have you a copy of said transfer? If yea, please annex the same to your testimony.

Interrogatory 2d. Were you the bona fide owner of the said interest in the New Orleans and Carrollton Railroad Company which you transferred to the bank?

[SEAL.] (Signed) ELMORE & KING,
Solicitors for Complainant.

CLERK'S OFFICE:

107 A true copy of the original on file. New Orleans, June 30th, 1868.

(Signed) D. URBAN, *Clerk*,
By F. B VINOT, *D'y Clerk.*

Testimony taken under the foregoing commission.

United States circuit court for the fifth circuit and district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD,
G. T. Beauregard, & others.

Testimony taken this 3d day of August, 1868, at the city of New York, by the undersigned, Charles T. Middlebrook, named in a certain commission, dated the 30th of June, 1868, from the above
108 court, in answer to certain interrogatories annexed to said commission.

Mr. Augustus C. Graham, being by me first duly sworn, testified as follows:

In answer to the first interrogatory. I did, on the 8th of May, 1867, transfer my interest in the New Orleans and Carrollton Railroad Company

to the Fourth National Bank of New York, and annex to this deposition a copy of said transfer.

To the second interrogatory witness deposes, I was.

(Signed) A. C. GRAHAM.

Subscribed and sworn to before me this 3d day of August, 1868.

(Signed) CHARLES T. MIDDLEBROOK,
Commissioner.

Mr. Billopp Seaman, being first duly sworn, testified:

109 To the first interrogatory. I am the cashier of the Fourth National Bank of New York.

To the second interrogatory. The Fourth National Bank is an incorporated institution, and is organized under the act of Congress approved February 25th, 1863, and annexed hereto is a certificate of incorporation.

To the fourth interrogatory. The Fourth National Bank did have such a transaction with Augustus C. Graham, by which he sold and conveyed to the bank his interest in the New Orleans and Carrollton Railroad Company; the conveyance was made to the bank on the 8th May, 1867. I have in my possession, as such cashier, the original conveyance; it is a genuine document, and the signatures thereto are the genuine signatures of the parties.

To the fourth interrogatory he answers, Yes.

(Signed) BILLOPP SEAMAN,
110 *Cashier of Fourth National Bank of the City of New York.*

Subscribed and sworn to before me this 3d day of August, 1868.

(Signed) CHARLES T. MIDDLEBROOK,
Commissioner.

Mr. Phil. C. Calhoun, being by me first duly sworn, did depose and say:

To the first interrogatory. The Fourth National Bank of New York is organized under the act of Congress approved February 25th, 1863, and the acts amendatory thereof, and the certificate annexed to the evidence of Mr. Seaman, the cashier, is such evidence of incorporation.

To the third interrogatory. The bank did have such a transaction with Augustus C. Graham, by which he sold or conveyed to the bank his interest in the New Orleans and Carrollton Railroad Company. The said conveyance was made to the bank on the 8th of May,
111 1867. I have the original document under my control as president of the Fourth National Bank, and the same is a genuine document, and the signatures attached thereto are the genuine signatures of the parties.

To the fourth interrogatory he saith, Yes.

(Signed) P. C. CALHOUN, *President.*

Subscribed and sworn to before me this 3d day of August, 1868.

(Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

I hereby certify that the foregoing evidence was taken this 3d day of August, 1868, by me, under and by virtue of the commission from the United States circuit court for the 5th circuit and district of Louisiana.

Dated New York, August 3d, 1868.

[SEAL.] (Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

112 *Copy of transfer annexed to testimony of A. C. Graham.*

[U. S. stamps, $32 00.]

Know all men by these presents, that I, Augustus C. Graham, of Flushing, in Queep's County, State of New York, of the first part, for and in consideration of the sum of one dollar, to me in hand paid by the Fourth National Bank of the City of New York, of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, its successors and assigns, all the estate, right, title, and interest of and in a certain indenture of lease, made by the New Orleans and Carrollton Railroad Company to Gustave Toutaut Beauregard, dated the twelfth day of April, one thousand eight hundred and sixty-six, and recorded in the conveyance office of the parish of Jefferson,
113 in the State of Louisiana, in book II, fo. 312, on April 19th, 1866, to which I may be entitled by virtue of certain articles of copartnership made between said Gustave Toutaut Beauregard and Thomas P. May, and myself, bearing date the eighteenth day of April, 1866, or otherwise, and also all my right and interest in any property or effects of said partnership, and also all debts due to me from the said partnership, or any of the members thereof.

In witness whereof I have hereunto set my hand and seal this eighth day of May, in the year one thousand eight hundred and sixty-seven.

(Signed) AUG. C. GRAHAM. [L. S.]

Sealed and delivered in the presence of—

(Signed) A. A. ALVORD.
B. F. LEE, Jr.
MOSES B. MACLAY.

114 Registered in the conveyance office, parish of Jefferson, on the 15th May, 1867, in book I, folio 812.

(Signed) ERNEST COMMAGERE, *Recorder.*

[5c. stamp cancelled.]

Copy of commissioner's certificate attached.

UNITED STATES OF AMERICA,
State, County, & City of New York, ss:

I, Moses B. Maclay, residing in the city of New York, a commissioner in said State to take depositions, affidavits, acknowledgments of deeds, powers of attorney, &c., &c., to be used or recorded in the State of Louisiana, duly commissioned and qualified, do hereby certify and make known, that on the day of the date hereof, before me personally appeared Augustus C. Graham, of the city of New York, known to me to be the person described in, and who executed the annexed assignment,
115 and executed the same in my presence, and in the presence of A. A. Alvord, and B. F. Lee, jr., witnesses of lawful age, residing in said city, who have subscribed the same with me; and the said Augustus C. Graham acknowledged to me that he executed the same as his act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office this eighth day of May, one thousand eight hundred and sixty seven.

[SEAL.] (Signed) MOSES B. MACLAY,
Louisiana Commissioner in the City of New York.

Copy. (Signed) C. T. MIDDLEBROOK.

Certificate of incorporation annexed to testimony of Billopp Seaman.

[Copy.]

116 TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
Washington, February 27th, 1864.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that the Fourth National Bank of the City of New York, in the county of New York, and State of New York, has been duly organized under and according to the requirements of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof," approved February 25th, 1863, and has complied with all the provisions of said act required to be complied with before commencing the business of banking:

Now, therefore, I, Hugh McCulloch, comptroller of the currency, do hereby certify that the Fourth National Bank of the City of New
117 York, county of New York, and State of New York, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof, witness my hand and seal of office this twenty-seventh day of February, 1864.

[SEAL.] (Signed) HUGH McCULLOCH,
Comptroller of the Currency.

Copy. (Signed) C. T. MIDDLEBROOK.

The within commission, interrogatories, answers, copies, &c., deposited by me this 6th day of August, 1868, in the post office in the city of New York, directed to the clerk of the circuit court of the United States for the 5th judicial circuit, and district of Louisiana.

(Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

Motion and order.—Extract from the minutes of Friday, July 3d, 1868.

118 FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD and others. } No. 5359.

S. A. Torrey, esq., U. S. dist. attorney, having this day prayed for leave of court to make appearance and interplead in the case for the reasons stated in the notice on file, ordered that his prayer be granted.

Marshal's return.

Received, July 6th, 1868, by the U. S. marshal, and on 7th day of July, 1868, served copy of within order on Elmore & King, attorneys named herein, in hands of W. W. King, a member of said firm, personally, at office corner Natchez and Magazine streets, in this city.

New Orleans, July 7th, 1868.

(Signed) S. W. REED, *D'y U. S. Marshal.*

119 *Notice by United States attorney.—Filed July 3d, 1868.*

Circuit court of the United States, district of Louisiana.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
JOSEPH HERNANDEZ, G. W. BINDER, ALEXander Bonneval, & al.

To the honorable the judges of the circuit court for the district aforesaid:

The district attorney, Samuel H. Torrey, makes known to the court that the United States have guarantied the titles of the above-named defendants to certain property described in the bill and the answer of the said defendants, Hernandez, Binder, and Bonneval, and would defend the same: Now, in fulfillment of this duty, the district
120 attorney asks of the court, under instructions to him, for leave to appear for the defendants in this cause, and to defend the suit in their names in fulfillment of so much of the obligation as is involved in this suit, and to examine witnesses, and make arguments, and apply for orders in said cause.

(Signed) SAM. H. TORREY, *U. S. Att'y.*

Affidavit for commission.—Filed July 16th, 1868.

U. S. circuit court.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. et als. } No. 5359.

A. Bonneval, one of the defendants, being sworn, says that the testimony of the following persons is necessary to the case of said defendants, namely, Messrs. Van Dyck, P. C. Calhoun, Phillip Seaman,
121 and Augustus C. Graham, all residing in New York, and it is necessary that a commission issue to any Louisiana commissioner in said city of New York, for the purpose of securing the testimony of said witnesses to be produced on the trial of this case.

(Signed) ALEX'R BONNEVAL.

Sworn to and subscribed before me July 16th, 1868.

(Signed) F. B. VINOT, *D'y Cl'k.*

Notice to cross-interrogatories.—Issued July 16th, 1868.

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

To Elmore & King, attorneys for complainants:

Take notice that the defendants have this day filed interroga-
122 tories to certain witnesses therein named, copy whereof accompa-

nies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's office, New Orleans, July 16th, 1868.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

United States circuit court.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

Received July 17th, 1868, by the U. S. marshal, and on same day of July, 1868, served copy of within notice, interrogatories accompanying same, on Elmore and King, attorneys named herein, in hands of
123 W. W. King, a member of said firm, personally, at office corner of Magazine and Natchez streets in this city.

New Orleans, July 18th, 1868.

(Signed) S. W. REED, *D'y U. S. Marshal.*

Exceptions to interrogatories.—Filed July 23d, 1868.

United States circuit court for the fifth circuit, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & others. } No. 5359.

To the interrogatories propounded by the respondents to Mr. Van Dyck, to P. C. Calhoun, and Phillip Seaman, witnesses residing in New York, whose testimony is sought to be taken under commission, the complainants object and except upon the following grounds, to wit:
124 1st. The said testimony sought to be obtained is wholly irrelevant and immaterial to the isssues involved in this case.

2d. It is sought by the interrogatories to contradict and destroy the effect of written acts and acts under seal by parol testimony.

Wherefore the respondents object to the taking of testimony under said interrogatories, and to the introduction of the same in evidence.

To the interrogatories propounded to Augustus C. Graham the complainants object and except upon the same grounds as above stated, and to the introduction of any testimony to be taken therein.

(Signed) ELMORE & KING,
Solicitors for Complainants.

Commission for defendants.—Issued July 24th, 1868; returned and filed March 9th, 1869.

Circuit court of the United States for the fifth judicial circuit,
125 holding sessions in and for the district of Louisiana.

To any Louisiana commissioner in the State of New York:

Know ye that, reposing special trust and confidence in your integrity

and ability, we hereby authorize and require you, that you call and cause to come before you Mr. Van Dyck, assistant treasurer at New York, and Messrs. P. C. Calhoun, Philip Seaman, and Augustus C. Graham, and them duly examine on the annexed interrogatories on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Fourth National Bank of the City of New York is plaintiff, and New Orleans and Carrollton Railroad Co. & als. are defendants, and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send
126 inclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 24th day of July, anno Domini 1868, and the 93d year of the independence of the United States of America.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk*.

Copy of interrogatories.—Filed July 16th, 1868, and annexed to foregoing commission.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. et. als. } No. 5359.

United States circuit court for the fifth circuit, district of Louis-
127 iana.—In chancery.

Interrogatories propounded to Mr. Van Dyck, assistant treasurer at New York, and to Messrs. P. C. Calhoun, Phillip Seaman, and Augustus C. Graham, on behalf of the defendants.

Interrogatories to Messrs. Van Dyck, P. C. Calhoun, and Philip Seaman, residing in New York:

1st. Do you know anything respecting the transaction had between the Fourth National Bank of New York and Augustus C. Graham, by which the latter sold or conveyed to the bank his interest in the New Orleans and Carrollton Railroad Company; if yea, what was the real object to be accomplished by the parties in the said conveyance? Was it a genuine conveyance for a valid consideration, or was it simply intended as a guarantee for the indebtedness of said Graham to
128 the bank; and if so, what was that indebtedness, and the extent thereof?

2. Please state the origin and true nature of the indebtedness of Augustus C. Graham to the Fourth National Bank of New York, and likewise the real extent and amount of said indebtedness, both as it stood when the said conveyance was made and as it now stands.

3. Was not the Fourth National Bank of New York, at any time either before the said conveyance was made or since, provided with and put in possession of divers valuable effects, papers, and stocks, and other such guarantees by the said Augustus C. Graham or other parties, for the purpose of securing the indebtedness of the said Graham to the Fourth National Bank of New York? and if so, please give a description of the same, and state what sums of money have been realized therefrom.

129 Interrogatories propounded to Augustus C. Graham, New York:

1. Please state whether the interest standing in your name in the New Orleans and Carrollton Railroad Company, at the time it was conveyed by you to the Fourth National Bank of New York, was not really belonging to Thomas P. May. State whether you paid any portion of the monies requisite to entitle you to said interest; and, if yea, state from what fund the said monies were drawn to make the required payments.

(Signed) CYPRIEN DUFOUR,
Solicitor for Defendants.

CLERK'S OFFICE:

A true copy of the original on file. New Orleans, July 24th, 1868.
[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

130 *Testimony taken under the foregoing commission.*

Henry H. Van Dyck, being duly sworn, says, in answer to the interrogatories propounded to him in the annexed commission:

I know nothing, of my own knowledge, relative to the transactions referred to in the several interrogatories propounded to me. I never acted personally in the matter, and have no recollection of what was done or said by others relative thereto.

(Signed) H. H. VAN DYCK.
(Signed) JAMES H. FAY,
Commissioner, &c.

P. C. Calhoun, being duly sworn, says, in answer to the interrogatories propounded to him in the annexed commisssion:

In answer to the first interrogatory. Yes; I know of the trans-
131 action referred to. The real object to be accomplished by the parties in such conveyance was to secure to the Fourth National Bank the payment of certain drafts made by the First National Bank of New Orleans on the said Fourth National Bank, and payment of which was refused by the said Fourth National Bank until Mr. Graham secured it by the said conveyance. It was a genuine conveyance for a valid consideration, viz., to secure the bank as above stated. Mr. Graham was not indebted to the Fourth National Bank on his own account. The indebtedness of the First National Bank of New Orleans to the Fourth National Bank of New York was about one hundred thousand dollars after paying the draft above referred to.

(Signed) P. C. CALHOUN.
(Signed) JAMES H. FAY,
Commissioner, &c.

132 In answer to the second interrogatory. Mr. Graham is indebted to the Fourth National Bank of New York in consequence of the above transactions, which transactions were the origin of such indebtedness. He is now liable to the said Fourth National Bank for over fifty thousand dollars—nearly fifty-four thousand dollars. He was not indebted to the said Fourth National Bank on his own account, but he had previously guaranteed the Fourth National Bank against all over-drafts of the First National Bank of N[illegible]

and ability, we hereby authorize and require you, that you call and cause to come before you Mr. Van Dyck, assistant treasurer at New York, and Messrs. P. C. Calhoun, Philip Seaman, and Augustus C. Graham, and them duly examine on the annexed interrogatories on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Fourth National Bank of the City of New York is plaintiff, and New Orleans and Carrollton Railroad Co. & als. are defendants, and the same examinations so taken and reduced to writing, you certify under your hand and seal, and send
126 inclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 24th day of July, anno Domini 1868, and the 93d year of the independence of the United States of America.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Copy of interrogatories.—Filed July 16th, 1868, and annexed to foregoing commission.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. et. als. } No. 5359.

United States circuit court for the fifth circuit, district of Louis-
127 iana.—In chancery.

Interrogatories propounded to Mr. Van Dyck, assistant treasurer at New York, and to Messrs. P. C. Calhoun, Phillip Seaman, and Augustus C. Graham, on behalf of the defendants.

Interrogatories to Messrs. Van Dyck, P. C. Calhoun, and Philip Seaman, residing in New York:

1st. Do you know anything respecting the transaction had between the Fourth National Bank of New York and Augustus C. Graham, by which the latter sold or conveyed to the bank his interest in the New Orleans and Carrollton Railroad Company; if yea, what was the real object to be accomplished by the parties in the said conveyance? Was it a genuine conveyance for a valid consideration, or was it simply intended as a guarantee for the indebtedness of said Graham to
128 the bank; and if so, what was that indebtedness, and the extent thereof?

2. Please state the origin and true nature of the indebtedness of Augustus C. Graham to the Fourth National Bank of New York, and likewise the real extent and amount of said indebtedness, both as it stood when the said conveyance was made and as it now stands.

3. Was not the Fourth National Bank of New York, at any time either before the said conveyance was made or since, provided with and put in possession of divers valuable effects, papers, and stocks, and other such guarantees by the said Augustus C. Graham or other parties, for the purpose of securing the indebtedness of the said Graham to the Fourth National Bank of New York? and if so, please give a description of the same, and state what sums of money have been realized therefrom.

129 Interrogatories propounded to Augustus C. Graham, New York:

1. Please state whether the interest standing in your name in the New Orleans and Carrollton Railroad Company, at the time it was conveyed by you to the Fourth National Bank of New York, was not really belonging to Thomas P. May. State whether you paid any portion of the monies requisite to entitle you to said interest; and, if yea, state from what fund the said monies were drawn to make the required payments.

(Signed) CYPRIEN DUFOUR,
Solicitor for Defendants.

CLERK'S OFFICE:

A true copy of the original on file. New Orleans, July 24th, 1868.
[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

130 *Testimony taken under the foregoing commission.*

Henry H. Van Dyck, being duly sworn, says, in answer to the interrogatories propounded to him in the annexed commission:

I know nothing, of my own knowledge, relative to the transactions referred to in the several interrogatories propounded to me. I never acted personally in the matter, and have no recollection of what was done or said by others relative thereto.

(Signed) H. H. VAN DYCK.
(Signed) JAMES H. FAY,
Commissioner, &c.

P. C. Calhoun, being duly sworn, says, in answer to the interrogatories propounded to him in the annexed commisssion:

131 In answer to the first interrogatory. Yes; I know of the transaction referred to. The real object to be accomplished by the parties in such conveyance was to secure to the Fourth National Bank the payment of certain drafts made by the First National Bank of New Orleans on the said Fourth National Bank, and payment of which was refused by the said Fourth National Bank until Mr. Graham secured it by the said conveyance. It was a genuine conveyance for a valid consideration, viz., to secure the bank as above stated. Mr. Graham was not indebted to the Fourth National Bank on his own account. The indebtedness of the First National Bank of New Orleans to the Fourth National Bank of New York was about one hundred thousand dollars after paying the draft above referred to.

(Signed) P. C. CALHOUN.
(Signed) JAMES H. FAY,
Commissioner, &c.

132 In answer to the second interrogatory. Mr. Graham is indebted to the Fourth National Bank of New York in consequence of the above transactions, which transactions were the origin of such indebtedness. He is now liable to the said Fourth National Bank for over fifty thousand dollars—nearly fifty-four thousand dollars. He was not indebted to the said Fourth National Bank on his own account, but he had previously guaranteed the Fourth National Bank against all overdrafts of the First National Bank of New Orleans.

In answer to the third interrogatory. Augustus C. Graham gave the said Fourth National Bank ten thousand pounds sterling in drafts, drawn by the First National Bank of New Orleans on the Bank of Liverpool, which have been protested for non-acceptance, and no monies have ever been received upon them. Also, drafts by the same
133 parties for fifteen thousand pounds sterling, obtained from Mr. Graham, were sent for collection by Mr. Van Dyck, assistant treasurer of the United States at New York, through Messrs. I. and I. Stuart, of New York, subject to all the rights of the Fourth National Bank of New York, from which nothing has been obtained. Also, Mr. Graham conveyed to the said Fourth National Bank a plantation on the Mississippi, which I have every reason to believe is valueless, and from which nothing has been obtained or realized.

(Signed) P. C. CALHOUN.
(Signed) JAMES H. FAY,
Commissioner, &c.

Billopp Seaman, being duly sworn, says, in answer to the interrogatories propounded to Phillip Seaman in the annexed commission:

134 In answer to the first interrogatory. I am probably the person referred to under the name of "Phillip Seaman" in the annexed commission, as I am the cashier of the Fourth National Bank of New York. I know of the transaction referred to in this interrogatory. The real object to be accomplished by the parties in such conveyance was to secure to the Fourth National Bank the payment of certain drafts made by the First National Bank of New Orleans on the said Fourth National Bank, and payment of which was refused by the said Fourth National Bank until Mr. Graham secured it by the said conveyance. It was a genuine conveyance for a valid consideration, viz., to secure the bank as above stated. Mr. Graham was not indebted to the Fourth National Bank on his own account. The indebtedness of the First National Bank of New Orleans—

135 (Signed) BILLOPP SEAMAN.
(Signed) JAMES H. FAY,
Commissioner, &c.

—to the Fourth National Bank of New York was about one hundred thousand dollars after paying the drafts above referred to.

In answer to the second interrogatory. Mr. Graham is indebted to the Fourth National Bank of New York in consequence of the above transactions, which transactions were the origin of such indebtedness. He is now liable to the said Fourth National Bank for over fifty thousand dollars—nearly fifty-four thousand dollars. He was not indebted to the said Fourth National Bank on his own account, but he had previously guarantied the Fourth National Bank against all over-drafts of the First National Bank of New Orleans.

In answer to the third interrogatory. Augustus C. Graham
136 gave the said Fourth National Bank ten thousand pounds sterling in drafts on the Bank of Liverpool, which have been protested for non-acceptance, and no monies have ever been received upon them. Also, drafts for fifteen thousand pounds sterling obtained from Mr. Graham, were sent for collection by Mr. Van Dyck, assistant treasurer of the United States at New York, through Messrs. J. and J. Stuart & Co., of New York, subject to all the rights of the Fourth National Bank of New York, from which nothing has been obtained. Also, Mr.

Graham conveyed to the said Fourth National Bank a plantation on the Mississippi, which I have every reason to believe is valueless, and from which nothing has been realized.

(Signed) BILLOPP SEAMAN,

(Signed) JAMES H. FAY,
Commissioner, &c.

137 Augustus C. Graham, being duly sworn, says, in answer to the interrogatory propounded to him in the annexed commission:

The said interest belonged to me and not to Thomas P. May. I did pay monies that entitled me to said interest; the monies so paid were my own private funds.

(Signed) A. C. GRAHAM.

(Signed) JAMES H. FAY,
Commissioner, &c.

CITY, COUNTY, & STATE OF NEW YORK, *ss:*

I, James H. Fay, a commissioner for the State of Louisiana, residing in New York City, in the county and State of New York, do hereby certify that I caused the witnesses named in the annexed commission to come before me in the said city upon the 1st and 2d days of Feb-
138 ruary, A. D. 1869, and did then and there propound to them the interrogatories in the annexed commission addressed to them; that previous to their answering the same, said witnesses were severally duly sworn by me, and that the answers of each witness were thereupon written down by me, read over and signed by the deponent on each page thereof, and are hereunto annexed.

In witness whereof I have hereto set my hand and official seal at the city of New York this third day of February, A. D. 1869.

[SEAL.] (Signed) JAMES H. FAY,
Commissioner &c.

Complainant's affidavit for a commission.—Filed August 19th, 1868.

United States circuit court for the fifth circuit, district of Louisiana.—
In chancery.

139 FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company and others.

W. W. King, being sworn, deposes and says that he is solicitor and attorney for the complainants in the above suit; that he is informed and believes that P. C. Calhoun, esq., Philip Seaman, esq., and Augustus C. Graham, who reside in the city of New York, are material witnesses in complainant's behalf, without whose testimony they cannot safely go to trial. Wherefore a commission is prayed for, to be directed to Charles T. Middlebrook or to W. H. Boughton, to take the testimony of said witnesses in answer to the interrogatories filed in the case.

(Signed) WM. W. KING.

Sworn to and subscribed, August 19th, 1868, before me.

(Signed) F. B. VINOT, *D'y Clerk.*

140 *Notice to cross-interrogatories.—Issued August 19th, 1868.*

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & others. } No. 5359.

To the U. S. district attorney:

Take notice that the complainants have filed interrogatories to witnesses residing in New York, copy whereof accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court, within ten days from the service hereof.

Clerk's office, New Orleans, August 19th, 1868.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

141 Received, August 19th, 1868, by the U. S. marshal, and on same day of August, 1868, served copy of within notice on U. S. district attorney named herein, in hands of John Fahy, his clerk, at office in custom-house building in this city.

New Orleans, August 22d, 1868.

(Signed) S. W. REED, *D'y U. S. Marshal.*

Notice to cross-interrogatories.

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & als. } No. 5359.

To L. E. Simonds, esq., attorney for the New Orleans and Carrollton Railroad Co., and G. T. Beauregard, defendants:

142 Take notice that the complainants have filed interrogatories to witnesses residing in New York, copy whereof accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's office, New Orleans, August 19th, 1868.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

United States circuit court.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

Received, August 19th, 1868, by the U. S. marshal, and on same day

of August, 1868, served copy of within notice, interrogatories
143 accompanying same, on L. E. Simonds, attorney named herein, personally, at office, 14 Exchange Place, in this city.
New Orleans, August 22d, 1868.
(Signed) S. W. REED, *D'y U. S. Marshal.*

Notice to cross-interrogatories.—Issued August 19th, 1868.

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & als. } No. 5359.

To C. Dufour, esq., attorney for Alexander Bonneval, Joseph Hernandez, and G. Binder, defendants:

Take notice that the complainants have filed interrogatories to witnesses residing in New York, copy whereof accompanies this
144 notice, and that you may, if you think proper, put such cross interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.
Clerk's office, New Orleans, August 19th, 1869.
[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

United States circuit court.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company & als. } No. 5359.

Received, August 19th, 1868, by the U. S. marshal, and on 20 day of August, 1868, served copy of written notice, interrogatories accompanying same, on C. Dufour, attorney named herein, personally, at his office, 81 Bienville street, in this city.
New Orleans, August 22d, 1868.
145 (Signed) S. W. REED, *D'y U. S. Marshal.*

Commission for complainants.—Issued September 2d, 1868; returned and filed 28th September, 1868.

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To Charles L. Middlebrook or to W. H. Boughton, in the city of New York:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call and cause to come before you P. C. Calhoun, Philip Seaman, and Augustus C. Graham, witnesses residing in New York, and them duly examine on the annexed interrogatories on oath, touching and concerning cer-
146 tain matters and things in a case now depending in the said court, wherein the Fourth National Bank of the City of New

York is plaintiff, and the New Orleans and Carrollton Railroad Company, G. T. Beauregard, and others are defendants; and the same examinations so taken and reduced to writing, you certify, under your hand and seal, and send enclosed to this court, without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 2d day of September, anno Domini 1868, and the 93d year of the independence of the United States of America.

[SEAL] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Copy of interrogatories and cross-interrogatories filed, annexed to foregoing commission.

147 United States circuit court for the fifth circuit and district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, and others. } No. 5359.

Interrogatories propounded to P. C. Calhoun, Philip Seaman, and Augustus C. Graham, witnesses, residing in New York, whose testimony is to be taken by virtue of the commission issued in the above-entitled case in behalf of the complainants.

Interrogatories propounded to P. C. Calhoun and Philip Seaman:

Interrogatory 1st. Have you any connection with the Fourth National Bank of New York? If yea, please state what it is.

Interrogatory 2d. Is the Fourth National Bank of New York,
148 the complainants, an incorporated company? If yea, please annex to your answers the evidence of incorporation.

Interrogatory 3d. Did the Fourth National Bank, at any time, have a transaction with Augustus C. Graham, by which he sold or conveyed to the bank his interest in the New Orleans and Carrollton Railroad Company? If yea, please state when the said conveyance was made to the bank. Have you in your possession the original conveyance? If yea, please state whether the same is a genuine document, and the signatures attached thereto the genuine signatures of the parties.

Interrogatory 4th. At the time the said Graham made the conveyance of his interest in the said railroad to the bank, did the bank receive the same in good faith, and under the belief that Graham was the bonâ fide owner of the interest he conveyed to the bank?

(Signed) ELMORE & KING,
149 *Solicitors for Complainants.*

Interrogatories to Augustus C. Graham:

Interrogatory 1st. Did you at any time transfer or convey to the Fourth National Bank of New York, your interest in the New Orleans and Carrollton Railroad Company? If yea, state when you did so. Have you a copy of said transfer? If yea, please annex the same to your testimony.

Interrogatory 2d. Were you the bonâ fide owner of the said interest in

the New Orleans and Carrollton Railroad Company which you transferred to the bank?

(Signed) ELMORE & KING,
Solicitors for Complainant.

Cross-interrogatories.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD CO. & als. } No. 5359.

United States circuit court.

Cross-interrogatories propounded, on behalf of the defendants, to the witnesses P. C. Calhoun, Philip Seaman, and Augustus C. Graham, of New York, whose testimony is called for by the complainants.

1. To P. C. Calhoun and Phillip Seaman. Please state the origin and true nature of the indebtedness of Augustus C. Graham to the Fourth National Bank of New York, and likewise the real extent and amount of said indebtedness. State also what was the real object to be accomplished by the parties in the conveyance made by Augustus C. Graham, and described in the third interrogatory propounded by the complainants. Was it a genuine conveyance, for a valid consideration, or was it simply intended as a guarantee for the indebtedness of said Gra-
151 ham; and, if so, what was that indebtedness and the extent thereof? Was not the Fourth National Bank of New York, at any time, either before the said conveyance was made or since, provided with, and put in possession of, divers valuable effects, papers, and stocks, and other such guarantees, by the said Augustus C. Graham, or other parties, for the purpose of securing the above-mentioned indebtedness of the said Graham to the complainants; and, if so, please give a description of the same; and state, at the same time, what sums of money have been realized upon the same.

2d. To Augustus C. Graham. Please state whether the interest standing in your name in the New Orleans and Carrollton Railroad Co., at the time it was conveyed by you to the complainants, was not really belonging to Thomas P. May. State whether you paid any
152 portion of the moneys required to entitle you to said interest; and, if yea, state with whose funds the said payments were made.

(Signed) CYPRIEN DUFOUR,
Solicitor for Defendants.

CLERK'S OFFICE:

I certify the foregoing to be true copies of the originals on file.
New Orleans, September 2d, 1868.
[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *Dy Clk.*

United States circuit court for the fifth circuit and district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD COMPANY, G. T. Beauregard, and others. } In chancery.

153 Testimony taken this 21st day of September, 1868, pursuant to

the annexed commission, by the undersigned named as commissioner in said commission.

P. C. Calhoun, being duly sworn, testifies as follows:

To the first interrogatory he answers: I am president of the Fourth National Bank of the City of New York.

To the second interrogatory he answers: It is an incorporated company, and the certified copy of the certificate of incorporation hereto annexed is such evidence and marked I.

To the third interrogatory he answers: Yes; such a conveyance was made on the 8th day of May, 1867. I have the original instrument in my possession as president of the bank, and such instrument is
154 a genuine document, and the signatures attached thereto are the genuine signatures of the parties. The document hereto annexed, and marked A, is such original document.

To the fourth interrogatory he answers: Yes; the bank received the same in good faith, believing Mr. Graham owned the property, and he receiving a consideration therefor.

To the cross-interrogatory he answers: The indebtedness of Mr. Graham to the bank arose upon his guaranty of the payment of drafts of First National Bank of New Orleans upon the Fourth National Bank of New York, to an amount exceeding $100,000; of this, about $60,000 remains unpaid. The real object of this conveyance was to secure this indebtedness or liability of Mr. Graham. The Fourth National Bank also received from Mr. Graham a plantation in
155 Louisiana by deed, believed to be of little or no value. The bank also received from the First National Bank of New Orleans, through the said Graham, as its agent, sterling bills of exchange, to the extent of ten thousand pounds, which bills have been protested, and are unpaid. No money has been realized from any of these securities, except that Mr. Graham has deposited with the bank about $25,000, to be held as a further security against his liability upon his said guaranty.

(Signed) P. C. CALHOUN.

Sworn to before me this 21st day of September, 1868.

(Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

United States circuit court for the fifth circuit and district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs
156 NEW ORLEANS AND CARROLLTON Railroad Company, G. T. Beauregard, and others. } In chancery.

Testimony taken this 21st day of September, 1868, pursuant to the annexed commission, by the undersigned named as commissioner in said commission.

Billopp Seaman, being duly sworn, testifies as follows:

To the first interrogatory he answers: I am cashier of the Fourth National Bank of the City of New York.

To the second interrogatory he answers: It is an incorporated company, and the certified copy of the certificate of incorporation hereto annexed is such evidence.

To the third interrogatory he answers: Yes; such a conveyance was made on the 8th day of May, 1867. I have the original instrument
157 in my possession as cashier of the bank, and such instrument is a genuine document, and the signatures attached thereto are the genuine signatures of the parties. The document hereto annexed, and marked A, is such original document.

To the fourth interrogatory he answers: Yes; the bank received the same in good faith, believing Mr. Graham owned the property, and he receiving a good consideration therefor.

To the cross-interrogatory he answers: The indebtedness of Mr. Graham to the bank arose upon his guaranty of the payment of drafts of First National Bank of New Orleans upon the 4th National Bank of New York, to an amount exceeding $100,000; of this, about $60,000 remains unpaid. The real object of this conveyance was
158 to secure this indebtedness or liability of Mr. Graham. The Fourth National Bank also received from Mr. Graham a plantation in Louisiana, by deed, believed to be of little or no value. The bank received from the First National Bank of New Orleans, through the said Graham, as its agent, sterling bills of exchange to the extent of ten thousand pounds, which bills have been protested, and are unpaid. No money has been realized from any of these securities, except that Mr. Graham deposited with the bank about $25,000, to be held as a further security against his liability upon his said guaranty.

(Signed) B. SEAMAN.

Sworn to before me this 21st day of September, 1868.

(Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

Testimony taken pursuant to the annexed commission, at the city of New York, on the 14th day of September, 1868, by Chas. T. Middlebrook, commissioner.

159 Mr. Augustus C. Graham, being duly sworn, testified as follows:

To the first interrogatory he answers: Yes; I did so transfer my interest on the 8th day of May, 1867. I have no copy of the transfer, but I identify the document marked "A," and annexed to the testimony of P. C. Calhoun, as such original document.

To the second interrogatory he answers: I was the bona fide holder of the interest in the railroad transferred to the bank.

To the cross-interrogatory he answers: The interest referred to belonged to me at the time stated in cross-interrogatory, and did not belong to any one else. I paid with my own funds the moneys required to entitle me to that interest.

(Signed) A. C. GRAHAM.

160 Sworn to before me this fourteenth day of September, 1868.

(Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

Certificate of incorporation marked I, annexed to the testimony of P. C. Calhoun.—Organization certificate.

[5c. U. S. rev. stamp.]

NEW YORK, *January 4th*, 1864.

We, whose names are specified in article fourth of this certificate,

have associated ourselves for the purpose of transacting the business of banking, under the act of Congress entitled "An act to provide a national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof," approved February 25th, 1863.

First. The name and title of this association shall be the Fourth National Bank of the City of New York.

161 Second. The said association shall be located at the city of New York, in the State of New York, where its operations of discount and deposit are to be carried on.

Third. The capital stock of said association shall be five millions of dollars, ($5,000,000,) and the same shall be divided into fifty thousand shares of one hundred dollars each.

Fourth. The name and residence of each of the shareholders of this association, with the number of shares held by each, are as follows:

Names.	Residence.	No. of shares.
Peter Cooper	New York City	200
Wm. H. Webb	"	1,000
George Opdyke	"	1,472
Henry Wm. T. Mali	" & Fordham	500
B H. Hutton	"	1,533
David Davis	"	972
Joseph Stuart	"	750
John Davis Mairs	"	100
E. R. Livermore	"	30
Jay Cooke	"	972
Jay Cooke, "trustee"	"	200
162 Joseph Lawrence	"	50
Henry B. Smith	"	80
John A. Stewart	"	30
Jas. R. Smith, jr	"	10
T. Ralston Smith	"	11
Joseph Hersfold	"	100
Philo Brown	Waterbury, Conn	50
Lewis Hoberts	New York City	50
I. M. Ceballas	"	60
Samuel Willetto	"	100
Herman Marcuse	"	250
John D. Maxwell	"	1,000
Rufus L. Lord	"	300
C. F. A. Hinrich	"	30
David Dows, "trustee"	"	200
Elijah T. Brown	"	10
Wm. H. Marston	"	100
Henry Elsworth	"	50
R. T. Woodward	"	100
Philip Nathan	"	20
Wm. G. Lambert	"	10
Geo. W. Egleston	"	4
Van Deusen Mairs	"	50
Chas. I. Starr	"	50
Catharine E. Smith	"	10
James W. Terry	"	5
Charles Lamson	"	50
Fred'k A. Chapman	"	25
Henry Burgman	"	30
Howell L. Williams	"	200
Egbert Starr	"	50
E. Riggs	"	2,000
163 W. A. Slingerland	"	20
Geo. D. Phelps	"	200
Chas. H. Mount	"	50
H. T. Morgan	"	50
John H. Talman	"	160
Jas. M. Drake	"	200
Wm. Tyson	"	100
Fred'k R. Grote	"	50
Edwin C. Estes	"	20
Francis Skiddy	"	100
Hector Morinson	"	50
Jed. Frye	"	50
A. J. Orr	"	50
Thos. T. Sturgis	"	100
Theo. B. Bogert	"	100
Darius R. Mangam	"	1,000

	Edmund M. Young	"	100
	Henry E. Moring	"	5
	Lot Jones	"	15
	John L. Hasbrouck	"	50
	Wm. K. Strong	"	1,000
	F. Newman	"	75
	T. H. Cassitt	"	100
	John B. Seaman	Fiskill L'd'g	50
	J. Pierpont Morgan	New York City	400
	Emile Heineman	"	500
	Walter F. Brush	"	25
	Henry D. Townsend	"	100
	James Hoy	"	1,000
	Richard Irvin	"	100
	L. Emmet Getty	"	20
164	L. P. Stone	"	50
	Samuel Eryle	"	30
	Timothy G. Churchill	"	50
	E. W. Coleman	"	15
	John D. Jones	"	50
	Wm. Augustus Gibson	"	100
	Marcia J. Berry	Brooklynn	2
	Floyd Bailey	New York City	150
	W. S. Stewart	Philadelphia	100
	Theo. Polhemus, jr.	New York City	100
	I. H. Holcomb	"	100
	Pelatiah P. Page	"	10
	Sarah E. Lobdell	"	1
	Wm. Birdsall, jr.	"	30
	I. W. Champlin	Mabbettsville, Duchess Co.	10
	Nehemiah Knight	New York City	1,000
	Wm. H. Reynolds	Providence, R. I.	250
	Thos. W. Ladd	"	100
	Henry Perkins	New York City	3
	John F. Cook	"	50
	Waldo Hutchins	"	100
	Chas. E. Butler	"	300
	Francis H. Tows	"	50
	Wm. H. Mellen	"	100
	O. B. Wilson	"	40
	J. J. Merian	Brooklynn	50
	Jos. Kohnstamm	New York City	30
	A. S. Hatch	"	1,000
	Geo. A. Wicks	"	100
	Robert P. Getty	"	30
	Benjamin F. Romaine	"	100
	Joseph L. Savage	"	900
165	Henry A. Garrett	"	25
	R. D. Lathrop	"	250
	R. D. Lathrop, "trustee"	"	500
	C. H. Ludinston	"	250
	C. B. Camp	"	100
	John Slade	"	100
	Geo. V. Hecker	"	100
	Wm. Hillman	"	50
	Thos. Eakin	"	50
	S. H. Alden	Albany, N. Y.	50
	Blakeley Wilson	New York City	50
	T. R. Butler	"	200
	G. Francis Opdyke	"	60
	J. H. Murison	"	50
	Wm. Lottimer	"	250
	Effingham Townsend	"	50
	Geo. J. Forrest	"	200
	Felix Thurnauer	"	50
	D. Drew	"	1,000
	Urish J. Smith	"	100
	Morris Ketchum	"	200
	Geo. Lockwood	"	100
	A. L. Husted	Brooklynn	50
	B. L. Brittin	New York City	50
	John S. Williams	"	500
	Owen Terry	"	200
	Thos. F. Mason	"	200
	Jarvis Slade	"	100
	C. E. Detmold	"	200
	John Kemp	"	100
	James Filor	"	200
166	Wm. H. Wall	New York City	200
	Wm. H. Fry	"	10
	Edward Whitehouse	"	100
	Wm. H. Priest	"	5
	Henry Blood	"	100
	Eben Sutton	"	50
	John M. Furnam	"	250
	Wm. Edwards	"	100
	Charles Carville	"	50

W. Irving Adams	"	
E. L. Bolles	"	
L. P. Noble	Fayetteville, N. Y	
Chas. L. Anthony	New York City	
Walter S. Gurnee	"	
Chas. L. Anthony, trustee	"	
Ezra White	"	
Joseph Fisher	"	
A. M. Richmond	"	
J. G. Briggs	"	
Horace Webster	"	
Henry Lee Norris	"	
Henry Clews	Fort Richmond, S. I	
Albert F. Ryan	New York City	
Wm. Cooper	"	
Whitman Phillips	"	
Marcus Spring	"	
David M. Farnum	"	
Alexander Dalrymple	"	
Geo. A. Robbins	"	
John B. Hall	"	
H. A. Johnson	"	
Wm. G. Smith	"	
167 E. T. H. Gibson	"	
Robert Earle	"	
Horace B. Claflin	"	
Wm. Whitewright, jr	"	
L. P. Morton	"	
A. Reyves	"	
S. B. Chittenden	"	
Wm. W. DeForest	"	
Wm. Jas. Quinlan, jr	"	
O. D. F. Grant	"	
Aug's D. Shephard	"	
Chas. G. Landon	"	
Wm. Foster	"	
Isaac Hyde, jr	Providence, R. I	
Joseph B. Hoyt	New York City	
Richard P. Buck	"	
Samuel Titus	"	
William Tilden	"	
Israel Corse	"	
W. M. Vermilye	"	
Hiram Sibley	"	
John Ward	"	
Aaron Arnold	Rochester, N. Y	
The Conn. Life Ins. Co	New York City	
The Phœnix Ins. Co	"	
The Hartford Fire Ins. Co	Hartford, Conn	
Horace O. Moss	Of Hartford	
Henry G. Root	"	
Tully D. Bowen	"New Berlin, Chenango Co., N. Y."	
Joseph Plummer	Bennington, Vt	
Wm. E. Sugden	Providence, R. I	
168 Duty Green	Pittsburgh, Pa	
Wm. P. Griffin	Hartford, Conn	
Shubare Hutchins	Providence, R. I	
Aug's H. Moss	New York City	
L. C. Abel	Providence, R. I	
Amos Hard	"Sandusky, Erie Co., Ohio."	
Wm. Badger	Poughkeepsie, N. Y	
Ira Gage Barnes	Newtown, Conn	
E. W. Clark	Philadelphia	
Chas. T. Yerkes	Syracuse, N. Y	
Stephen M. Buckingham	Philadelphia	
David Milne	"	
Freeman Clarke	Poughkeepsie, N. Y	
Edward Willmer	Philadelphia	
W. T. Gleason	Bath, Me	
Myron Clarke	Wilkesbarre, Luzerne Co., Pa	
Wm. S. Slater	Portland, Conn	
Ann Luden	Manchester, Vt	
Wm. Brown	Providence, R. I	
Wm. T. Page	Milwaukee, Wis	
J. S. Hopkins	Evansville, Ind	
Robert Barnes	"	
Francis Hopkins	"	
James Emmett	"	
Gillisen Magin	"Waverly, Ohio"	
Horatio Q. Wheeler	Evansville, Ind	
Charles Velle	"	
Robert L. Taylor	"	
B. H. Hutton, "trustee"	New York City	
Geo. Opdyke, "trustee"	"	
Freeman Clark	"	
Wm. F. Lee	"	
189 Shares		50,000

Fifth. Said association shall commence on the eighteenth day of January, one thousand eight hundred and sixty-four.

Sixth. This certificate is made in order that we may avail ourselves of the advantages of the aforesaid act.

Witness our hands and seals this fourth day of January, one thousand eight hundred and sixty-four.

	Peter Cooper.	[L. S.]	E. R. Livermoore.	[L. S.]
	W. H. Webb.	[L. S.]	Jay Cooke.	[L. S.]
	George Opdyke.	[L. S.]	Jay Cooke, "trustee."	[L. S.]
	Henry W. T. Mali.	[L. S.]	Joseph Lawrence.	[L. S.]
	B. H. Hutton.	[L. S.]	Henry B. Smith.	[L. S.]
	David Dows.	[L. S.]	John A. Stewart.	[L. S.]
	Joseph Stuart.	[L. S.]	Jas. R. Smith, jr.	[L. S.]
	John Davis Mairs.	[L. S.]		
170	T. Ralston Smith.	[L. S.]	Wm. G. Lambert.	[L. S.]
	Joseph Herzfeld.	[L. S.]	George W. Egleston.	[L. S.]
	Philo Brown.	[L. S.]	Van Deusen Mairs.	[L. S.]
	Lewis Roberts.	[L. S.]	Chas. J. Starr.	[L. S.]
	J. M. Ceballos.	[L. S.]	Catharine E. Smith.	[L. S.]
	Samuel Willete.	[L. S.]	James W. Terry.	[L. S.]
	Herman Marcuse.	[L. S.]	Charles Lamson.	[L. S.]
	John D. Maxwell.	[L. S.]	Frederick A. Chapman.	[L. S.]
	Rufus L. Lord.	[L. S.]	Henry Burgman, M. D.	[L. S.]
	Ch. F. Hinrich.	[L. S.]	Howell L. Williams.	[L. S.]
	David Dows, "trustee."	[L. S.]	Egbert Starr.	[L. S.]
	Elijah T. Brown.	[L. S.]	E. Riggs.	[L. S.]
	Wm. H. Marston.	[L. S.]	W. A. Slingerland.	[L. S.]
	Henry Elsworth.	[L. S.]	Geo. D. Phelps.	[L. S.]
	R. T. Woodward.	[L. S.]	Charles H. Mount.	[L. S.]
	Phillip Nathan.	[L. S.]	H. T. Morgan.	[L. S.]
171	John H. Talman.	[L. S.]	Wm. K. Strong.	[L. S.]
	James M. Drake.	[L. S.]	F. Newman.	[L. S.]
	Wm. Tyson.	[L. S.]	F. H. Cassitt.	[L. S.]
	Fred. R. Grote.	[L. S.]	Jno. B. Seaman.	[L. S.]
	Edwin C. Estes.	[L. S.]	J. Pierpont Morgan.	[L. S.]
	Francis Skiddy.	[L. S.]	Emile Heineman.	[L. S.]
	Hector Morison.	[L. S.]	Walter F. Brush.	[L. S.]
	Jed. Frye.	[L. S.]	Henry D. Townsend.	[L. S.]
	A. E. Orr.	[L. S.]	James Hoy.	[L. S.]
	Thomas T. Sturgis.	[L. S.]	Richard Irvin.	[L. S.]
	Theo. P. Bogert.	[L. S.]	S. Emmet Getty.	[L. S.]
	Darius R. Mangam.	[L. S.]	L. P. Stone.	[L. S.]
	Edmund M. Young.	[L. S.]	Samuel Eryle.	[L. S.]
	Henry E. Moring.	[L. S.]	Tim'y G. Churchill.	[L. S.]
	Lot Jones.	[L. S.]	E. W. Coleman.	[L. S.]
	Jno. L. Hasbrouck.	[L. S.]		
172	John D. Jones.	[L. S.]	I. H. Holcombe.	[L. S.]
	Wm. Aug's Gibson.	[L. S.]	Pelatiah P. Page.	[L. S.]
	Marcia J. Berry.	[L. S.]	Mrs. Sarah L. Lobdell.	[L. S.]
	Floyd Bailey.	[L. S.]	Wm. Birdsall, jr.	[L. S.]
	W. S. Stewart.	[L. S.]	I. W. Champlin.	[L. S.]
	Theodore Polhemus, jr.	[L. S.]	Nehemiah Knight.	[L. S.]

	W. Irving Adams	"	1
	E. L. Bolles	"	100
	L. P. Noble	Fayetteville, N. Y	100
	Chas. L. Anthony	New York City	1,000
	Walter S. Gurnee	"	200
	Chas. L. Anthony, trustee	"	60
	Ezra White	"	50
	Joseph Fisher	"	30
	A. M. Richmond	"	10
	J. G. Briggs	"	100
	Horace Webster	"	20
	Henry Lee Norris	Port Richmond, S. I	50
	Henry Clews	New York City	1,000
	Albert F. Ryan	"	20
	Wm. Cooper	"	100
	Whitman Phillips	"	10
	Marcus Spring	"	100
	David M. Farnum	"	100
	Alexander Dalrymple	"	20
	Geo. A. Robbins	"	500
	John B. Hall	"	25
	H. A. Johnson	"	250
	Wm. G. Smith	"	50
167	E. T. H. Gibson	"	250
	Robert Earle	"	50
	Horace B. Claflin	"	100
	Wm. Whitewright, jr	"	250
	L. P. Morton	"	250
	A. Reynes	"	50
	S. B. Chittenden	"	250
	Wm. W. DeForest	"	300
	Wm. Jas. Quinlan, jr	"	5
	O. D. F. Grant	"	972
	Aug's D. Shephard	"	50
	Chas. G. Landon	"	40
	Wm. Foster	Providence, R. I	200
	Isaac Hyde, jr	New York City	100
	Joseph B. Hoyt	"	350
	Richard P. Buck	"	100
	Samuel Titus	"	50
	William Tilden	"	250
	Israel Corse	"	250
	W. M. Vermilye	"	500
	Hiram Sibley	Rochester, N. Y	500
	John Ward	New York City	150
	Aaron Arnold	"	150
	The Conn. Life Ins. Co	Hartford, Conn	200
	The Phœnix Ins. Co	Of Hartford	200
	The Hartford Fire Ins. Co	"	200
	Horace O. Moss	"New Berlin, Chenango Co., N. Y."	25
	Henry G. Root	Bennington, Vt	50
	Tully D. Bowen	Providente, R. I	165
	Joseph Plummer	Pittsburgh, Pa	50
	Wm. E. Sugden	Hartford, Conn	10
168	Duty Green	Providence, R. I	100
	Wm. P. Griffin	New York City	20
	Shubare Hutchins	Providence, R. I	80
	Aug's H. Moss	"Sandusky, Erie Co., Ohio."	15
	L. C. Abel	Poughkeepsie, N. Y	10
	Amos Hard	Newtown, Conn	5
	Wm. Badger	Philadelphia	40
	Ira Gage Barnes	Syracuse, N. Y	50
	E. W. Clark	Philadelphia	500
	Chas. T. Yerkes	"	50
	Stephen M. Buckingham	Poughkeepsie, N. Y	30
	David Milne	Philadelphia	300
	Freeman Clarke	Bath, Me	50
	Edward Willmer	Wilkesbarre, Luzerne Co., Pa	2
	W. T. Gleason	Portland, Conn	3
	Myron Clarke	Manchester, Vt	60
	Wm. S. Slater	Providence, R. I	100
	Asa Luden	Milwaukee, Wis	20
	Wm. Ecown	Evansville, Ind	50
	Wm. T. Page	"	10
	J. S. Hopkins	"	20
	Robert Barnes	"	50
	Francis Hopkins	"	10
	James Emmett	"Waverly, Ohio"	200
	Gillison Magin	Evansville, Ind	40
	Horatio Q. Wheeler	"	20
	Charles Veile	"	50
	Robert L. Taylor	New York City	250
	B. H. Hutton, "trustee"	"	200
	Geo. Opdyke, "trustee"	"	7,407
	Freeman Clark	"	1,000
	Wm. F. Lee	"	20
180	Shares		50,000

Fifth. Said association shall commence on the eighteenth day of January, one thousand eight hundred and sixty-four.

Sixth. This certificate is made in order that we may avail ourselves of the advantages of the aforesaid act.

Witness our hands and seals this fourth day of January, one thousand eight hundred and sixty-four.

	Peter Cooper.	[L. S.]	E. R. Livermoore.	[L. S.]
	W. H. Webb.	[L. S.]	Jay Cooke.	[L. S.]
	George Opdyke.	[L. S.]	Jay Cooke, "trustee."	[L. S.]
	Henry W. T. Mali.	[L. S.]	Joseph Lawrence.	[L. S.]
	B. H. Hutton.	[L. S.]	Henry B. Smith.	[L. S.]
	David Dows.	[L. S.]	John A. Stewart.	[L. S.]
	Joseph Stuart.	[L. S.]	Jas. R. Smith, jr.	[L. S.]
	John Davis Mairs.	[L. S.]		
170	T. Ralston Smith.	[L. S.]	Wm. G. Lambert.	[L. S.]
	Joseph Herzfeld.	[L. S.]	George W. Egleston.	[L. S.]
	Philo Brown.	[L. S.]	Van Deusen Mairs.	[L. S.]
	Lewis Roberts.	[L. S.]	Chas. J. Starr.	[L. S.]
	J. M. Ceballos.	[L. S.]	Catharine E. Smith.	[L. S.]
	Samuel Willete.	[L. S.]	James W. Terry.	[L. S.]
	Herman Marcuse.	[L. S.]	Charles Lamson.	[L. S.]
	John D. Maxwell.	[L. S.]	Frederick A. Chapman.	[L. S.]
	Rufus L. Lord.	[L. S.]	Henry Burgman, M. D.	[L. S.]
	Ch. F. Hinrich.	[L. S.]	Howell L. Williams.	[L. S.]
	David Dows, "trustee."	[L. S.]	Egbert Starr.	[L. S.]
	Elijah T. Brown.	[L. S.]	E. Riggs.	[L. S.]
	Wm. H. Marston.	[L. S.]	W. A. Slingerland.	[L. S.]
	Henry Elsworth.	[L. S.]	Geo. D. Phelps.	[L. S.]
	R. T. Woodward.	[L. S.]	Charles H. Mount.	[L. S.]
	Phillip Nathan.	[L. S.]	H. T. Morgan.	[L. S.]
171	John H. Talman.	[L. S.]	Wm. K. Strong.	[L. S.]
	James M. Drake.	[L. S.]	F. Newman.	[L. S.]
	Wm. Tyson.	[L. S.]	F. H. Cassitt.	[L. S.]
	Fred. R. Grote.	[L. S.]	Jno. B. Seaman.	[L. S.]
	Edwin C. Estes.	[L. S.]	J. Pierpont Morgan.	[L. S.]
	Francis Skiddy.	[L. S.]	Emile Heineman.	[L. S.]
	Hector Morison.	[L. S.]	Walter F. Brush.	[L. S.]
	Jed. Frye.	[L. S.]	Henry D. Townsend.	[L. S.]
	A. E. Orr.	[L. S.]	James Hoy.	[L. S.]
	Thomas T. Sturgis.	[L. S.]	Richard Irvin.	[L. S.]
	Theo. P. Bogert.	[L. S.]	S. Emmet Getty.	[L. S.]
	Darius R. Mangam.	[L. S.]	L. P. Stone.	[L. S.]
	Edmund M. Young.	[L. S.]	Samuel Eryle.	[L. S.]
	Henry E. Moring.	[L. S.]	Tim'y G. Churchill.	[L. S.]
	Lot Jones.	[L. S.]	E. W. Coleman.	[L. S.]
	Jno. L. Hasbrouck.	[L. S.]		
172	John D. Jones.	[L. S.]	I. H. Holcombe.	[L. S.]
	Wm. Aug's Gibson.	[L. S.]	Pelatiah P. Page.	[L. S.]
	Marcia J. Berry.	[L. S.]	Mrs. Sarah L. Lobdell.	[L. S.]
	Floyd Bailey.	[L. S.]	Wm. Birdsall, jr.	[L. S.]
	W. S. Stewart.	[L. S.]	I. W. Champlin.	[L. S.]
	Theodore Polhemus, jr.	[L. S.]	Nehemiah Knight.	[L. S.]

Wm. H. Reynolds. [L. S.]
Thomas W. Ladd. [L. S.]
Henry Perkins. [L. S.]
John F. Cook. [L. S.]
Waldo Hutchins. [L. S.]
Charles E. Butler. [L. S.]
Francis H. Tows. [L. S.]
Wm. H. Mellen. [L. S.]
O. B. Wilson. [L. S.]
J. J. Merian. [L. S.]
Joseph Kolmstamm. [L. S.]
A. S. Hatch. [L. S.]
Geo. A. Wicks. [L. S.]
Robt. P. Getty. [L. S.]
Benj. F. Romaine. [L. S.]
Joseph L. Savage. [L. S.]
Henry A. Garrett. [L. S.]
R. D. Lathrop. [L. S.]
R. D. Lathrop, trustee. [L. S.]
C. H. Ludington. [L. S.]

173 C. B. Camp. [L. S.]
John Slade. [L. S.]
George V. Hecker. [L. S.]
Wm. Hillerman. [L. S.]
Thomas Eakin. [L. S.]
S. H. Alden. [L. S.]
Blakeley Wilson. [L. S.]
T. R. Butler. [L. S.]
G. Francis Opdyke. [L. S.]
J. H. Morrison. [L. S.]
Wm. Lattimer. [L. S.]
Effingham Townsend. [L. S.]
George J. Forrest. [L. S.]
Felix Thurnauer. [L. S.]
D. Drew. [L. S.]
Uriah J. Smith. [L. S.]
Morris Ketchum. [L. S.]
Geo. Lockwood. [L. S.]
S. L. Husted. [L. S.]
R. S. Brittin. [L. S.]
Jno. S. Williams. [L. S.]
Owen Terry. [L. S.]
Thos. F. Mason. [L. S.]
Jarvis Slade. [L. S.]
C. E. Detmold. [L. S.]
John Kemp. [L. S.]
Jas. Filor. [L. S.]
W. H. Wall. [L. S.]
Wm. H. Fry. [L. S.]
Ed. Whitehouse. [L. S.]
Wm. H. Priest. [L. S.]

174 Henry Blood. [L. S.]
Eben Sutten. [L. S.]
Jno. M. Furnam. [L. S.]
Wm. Edwards. [L. S.]
Charles Caron. [L. S.]
W. Irving Adams. [L. S.]
E. L. Bolles. [L. S.]
L. P. Noble. [L. S.]
Chas. L. Anthony. [L. S.]
Walter S. Gurnee. [L. S.]
Charles L. Anthony, *trustee.* [L. S.]
Ezra White. [L. S.]
Joseph Fisher. [L. S.]
A. M. Richmond. [L. S.]
J. G. Briggs. [L. S.]
Horace Webster. [L. S.]
Henry Lee Norris. [L. S.]
Henry Clewes. [L. S.]
Albert F. Ryan. [L. S.]
Wm. Cooper. [L. S.]
Whitman Phillips. [L. S.]
Marcus Spring. [L. S.]
David M. Farnum. [L. S.]
Alexander Dalrymple. [L. S.]
Geo. A. Robbins. [L. S.]
John B. Hall. [L. S.]
H. A. Johnson. [L. S.]
Wm. G. Smith. [L. S.]
E. T. H. Gibson. [L. S.]
Robert Earle. [L. S.]
Horace B. Claflin. [L. S.]
Wm. Whitewright, jr. [L. S.]

175 L. P. Morton. [L. S.]
A. Reynes. [L. S.]
S. B. Chittenden. [L. S.]
Wm. H. De Forrest. [L. S.]
Wm. Jas. Quinlan, jr. [L. S.]
O. D. F. Grant. [L. S.]
Aug. D. Shephard. [L. S.]
Charles S. Landon. [L. S.]
Wm. Foster. [L. S.]
Isaac Hyde, jr. [L. S.]
Jas. B. Hoyt. [L. S.]
Richard P. Buck. [L. S.]
Samuel Titus. [L. S.]
William Tilden. [L. S.]
Israel Corse. [L. S.]
W. M. Vermilye. [L. S.]
Hiram Sibley. [L. S.]
John Ward, [L. S.]
Aaron Arnold. [L. S.]
The Connecticut Life Ins. Co., [L. S.]
By George Opdyke, *att'y.* [L. S.]

The Phœnix Ins. Co. of Hartford, [L. S.]
By George Opdyke, *att'y.* [L. S.]
The Hartford Fire Ins. Co., [L. S.]
By George Opdyke, *att'y.* [L. S.]
Horace O. Moss, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Henry G. Root, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Tully D. Bowen, [L. S.]
By George Opdyke, *att'y.* [L. S.]

176 Joseph Plumner, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Wm. E. Sugden, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Duty Greene, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Wm. P. Griffin. [L. S.]
Shubare Hutchins, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Augustus H. Moss, [L. S.]
By George Opdyke, *att'y.* [L. S.]
S. C. Abel, [L. S.]
By George Oydyke, *att'y.* [L. S.]
Amos Hard, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Wm. Badger, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Ira Gage Barnes, [L. S.]
By George Opdyke, *att'y.* [L. S.]
E. W. Clark, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Charles T. Yerkes, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Stephen M. Buckingham, [L. S.]
By George Opdyke, *att'y.* [L. S.]
David Milne, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Freeman Clark, *of Maine*, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Edward Willmer, [L. S.]
By George Opdyke, *att'y.* [L. S.]
Wm. T. Gleason,
By George Opdyke, *att'y.* [L. S.]

177 Myron Clark,
By George Opdyke, *att'y.* [L. S.]
Wm. S. Slater,
By George Opdyke, *att'y.* [L. S.]
Annie Leeden,
By George Opdyke, *att'y.* [L. S.]
Wm. Brown,
By George Opdyke, *att'y.* [L. S.]
Wm. T. Page,
By George Opdyke, *att'y.*
J. S. Hopkins,
By George Opdyke, *att'y.* [L. S.]
Rob't Barnes,
By George Opdyke, *att'y.* [L. S.]
Francis Hopkins,
By George Opdyke, *att'y.* [L. S.]
James Emmett,
By George Opdyke, *att'y.* [L. S.]
Gillison Magliee,
By George Opdyke, *att'y.* [L. S.]
Horatio Q. Wheeler,
By George Opdyke, *att'y.* [L. S.]
Charles Viele,
By George Opdyke, *att'y.* [L. S.]
Robert L. Taylor. [L. S.]
B. H. Hutton, *trustee.* [L. S.]
George Opdyke, *trustee.* [L. S.]
Freeman Clark,
By George Opdyke, *att'y.* [L. S.]
Wm. F. Lee. [L. S.]

178 STATE OF NEW YORK,
City and County of New York, ss:

I, William S. Opdyke, a notary public, in and for the county of New York, do hereby certify, that at various times between the seventh and sixteenth days of January, in the year one thousand eight hundred and sixty-four, before me personally came Peter Cooper, William H. Webb, George Opdyke, Henry W. T. Mali, Benjamin H. Hutton, David Dows, Joseph Stuart, John Daws Mairs, E. R. Livermore, Jay Cooke, Jay Cooke, trustee, Joseph Lawrence, Henry B. Smith, John A. Stewart, James R. Smith, J. T. Ralston Smith, Joseph Herzfeld, Philo Brown, Lewis Roberts, J. M. Ceballos, Samuel Milleto, Herman Marcuse, John D. Maxwell, Rufus L. Lord, Charles F. A. Hinrich, David Dows, trustee, Elijah T. Brown, Wm. H. Marston, Henry Elsworth, R. T. Woodward,

Philip Nathan, Wm. G. Lambert, George W. Egleston, Van Deu-
179 sen Mairs, Charles J. Starr, Catharine E. Smith, James W. Terry, Charles Lamson, Frederick A. Chapman, Henry Brugman, Howell L. Williams, Eghert Starr, Elisha Riggs, W. A. Slingerland, George D. Phelps, Charles H. Mount, H. T. Morgan, John H. Talman, James M. Drake, William Tyson, Frederick R. Groti, Edwin C. Estes, Francis S. Kiddy, Hector Morison, Jed Frye, A. L. Orr, Thomas F. Sturgis, Theodore P. Bogert, Darius D. Mangam, Edmund M. Young, Henry E. Moring, Lot Jones, John L. Harbrouck, Wm. K. Strong, Franklin Newman, F. H. Cossitt, John B. Seaman, J. Pierpont Morgan, Emile Heineman, Walter F. Brush, Henry D. Townsend, James Hay, Richard Irvin, A. Emmet Getty, L. P. Stone, Samuel Eryle, Timothy S. Churchill, E. W. Coleman, John D. Jones, William Aug. Gibson, Marcia J. Berry, Floyd Bailey, Willian S. Stewart, Theodore Polhemus, jr., J. H.
180 Holcomb, Pelatiah P. Page, Sarah E. Lobdell, William Birdsall, jr., J. W. Champlin, Nehemiah Knight, Wm. A. Reynolds, Thomas W. Ladd, Henry Perkins, John T. Cook, Waldo Hutchins, Charles E. Butler, Francis H. Tows, William H. Mellen, O. B. Wilson, J. J. Merian, Joseph Kohnstamm, A. S. Hatch, George A. Wicks, Robert P. Getty, Benjamin F. Romaine, Joseph L. Savage, Henry A. Garrett, R. D. Lathrop, C. H. Ludington, R. D. Lathrop, trustee, C. B. Camp, John Slade, George V. Hecker, William Hillman, Thomas Eakin, S. H. Alden, Blakeley Wilson, T. R. Butler, G. Francis Opdyke, J. H. Morrison, William Lattimer, George J. Forrest, Effingham Townsend, Felix Thurnauer, Daniel Drew, Uriah J. Smith, Morris Ketchum, George Lockwook, S. L. Husted, B. L. Brittin, John S. Williams, Owen Terry, Thomas F. Mason, Jarvis Slade, C. E. Detmold, John Kimp, James Filor, W. H. Wall,
181 William H. Fry, Edward Whitehouse, William H. Priest, Henry Blood, Eben Sutton, John W. Farnum, William Edwards, Charles Caron, W. Irving Adams, E. L. Bolles, L. P. Noble, Charles L. Anthony, Ezra White, Charles L. Anthony, trustee, Walter S. Gurnee, Joseph Fisher, A. M. Richmond, J. S. Briggs, Horace Webster, Henry Lee Norris, Henry Clewes, Albert F. Ryan, George A. Robbins, John B. Hall, H. A. Johnson, William S. Smith, E. T. H. Gibson, Robert Earle, Horace B. Claflin, William Whitewright, jr., Levi P. Morton, A. Reynes, S. B. Chittenden, William H. De Forrest, William James Quinlan, jr., P. D. F. Grant, Augustus D. Shephard, Charles S. Landon, William Foster, Isaac Hyde, jr., Joseph B. Hoyt, Richard P. Buck, Samuel Titus, William Tilden, Israel Corse, W. M. Vermilye, Hiram Sibley, John Ward, Aaron Arnold, William P. Griffin, Robert L. Taylor, Ben-
182 jamin H. Hutton, trustee, George Opdyke trustee, and William F. Lee, to me well known, and severally acknowledged that they executed the foregoing instrument for the purpose therein mentioned. And the said Jay Cooke, David Dows, R. D. Lathrop, Charles L. Anthony, Benjamin H. Hutton, and George Opdyke also severally acknowledged that they executed the said instrument as trustees as well as individually.

And on the sixteenth day of January, in the year of our Lord one thousand eight h undred and sixty-four, before me personally appeared George Opdyke, known to me to be the individual described in the above instrument as the person executing the same as attorney for the Connecticut Life Insurance Co., the Phœnix Insurance Co. of Hartford, the Hartford Fire Insurance Company, Horace O. Moss, Henry S. Root, Tully D. Bowen, Joseph Plummer, William E. Sugden, Duty Greene, Shubare Hutchins, Augustus H. Moss, S. C. Abel, Amos Hard,
183 William Badger, Ira Gage Barnes, E. W. Clark, Charles T.

Yerkes, Stephen M. Buckingham, Freeman Clark, of Maine, W. T. Gleason, David Milne, William S. Slater, Edward Willmer, William Brown, Myron Clark, J. S. Hopkins, Annie Luden, Francis Hopkins, William T. Page, Gillison Maglice, Robert Barnes, Charles Viele, James Emmett, Horatio Q. Wheeler, and Freeman Clark, respectively, and acknowledged to me that he had executed the said instrument as the act and deed of the said persons severally and respectively, by virtue of the several powers of attorney hereunto annexed from the said persons respectively. And I further certify the said George Opdyke was known to me to be the person named in the said several instruments as the attorney thereby severally and respectively constituted.

In witness whereof I have hereunto set my hand and annexed
184 my seal of office this eighteenth day of January, A. D. one thousand eight hundred and sixty-four.

[SEAL.] WM. S. OPDYKE, *Notary Public.*

STATE OF NEW YORK,
City and County of New York, ss:

I, James Hervey Ackerman, a notary public in and for the county of New York, do hereby certify that on the eleventh day of January, in the year one thousand eight hundred and sixty-four, before me personally came William Cooper, Whitman Phillips, Marcus Spring, David M. Farnum, and Alexander Dalrymple, to me well known, and severally acknowledged to me that they executed the foregoing instrument for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal of office this eighteenth day of January, A. D. 1864.

[SEAL.] (Signed) JAMES HENRY ACKERMAN,
Notary Public.

185 Marked I September 12th, 1868.
(Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, ss:

I certify the foregoing to be a true copy of the original organization certificate of the Fourth National Bank of the city of New York, with the acknowledgments thereof, now on file and of record in this office, and of the whole of such originals, and that such originals were so filed and recorded on the 2d day of April, A. D. 1864.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this 17th day of September, A. D. 1868.

[SEAL] (Signed) JOHN JAY KNOX,
Dep. and Act'g Comptroller of the Currency.

186 *Assignment by Augustus C. Graham to the Fourth National Bank.—Marked "A" on the 14th of September, 1868, by Chas. T. Middlebrook, commissioner.*

[$32 00 U. S. int. rev. stamps affixed and cancelled.]

Know all men by these presents, that I, Augustus C. Graham, of

Philip Nathan, Wm. G. Lambert, George W. Egleston, Van Deu-
179 sen Mairs, Charles J. Starr, Catharine E. Smith, James W. Terry,
Charles Lamson, Frederick A. Chapman, Henry Brugman, Howell L. Williams, Eghert Starr, Elisha Riggs, W. A. Slingerland, George D. Phelps, Charles H. Mount, H. T. Morgan, John H. Talman, James M. Drake, William Tyson, Frederick R. Groti, Edwin C. Estes, Francis S. Kiddy, Hector Morison, Jed Frye, A. L. Orr, Thomas F. Sturgis, Theodore P. Bogert, Darius D. Mangam, Edmund M. Young, Henry E. Moring, Lot Jones, John L. Harbrouck, Wm. K. Strong, Franklin Newman, F. H. Cossitt, John B. Seaman, J. Pierpont Morgan, Emile Heineman, Walter F. Brush, Henry D. Townsend, James Hay, Richard Irvin, A. Emmet Getty, L. P. Stone, Samuel Eryle, Timothy S. Churchill, E. W. Coleman, John D. Jones, William Aug. Gibson, Marcia J. Berry,
Floyd Bailey, Willian S. Stewart, Theodore Polhemus, jr., J. H.
180 Holcomb, Pelatiah P. Page, Sarah E. Lobdell, William Birdsall, jr.,
J. W. Champlin, Nehemiah Knight, Wm. A. Reynolds, Thomas W. Ladd, Henry Perkins, John T. Cook, Waldo Hutchins, Charles E. Butler, Francis H. Tows, William H. Mellen, O. B. Wilson, J. J. Merian, Joseph Kohnstamm, A. S. Hatch, George A. Wicks, Robert P. Getty, Benjamin F. Romaine, Joseph L. Savage, Henry A. Garrett, R. D. Lathrop, C. H. Ludington, R. D. Lathrop, trustee, C. B. Camp, John Slade, George V. Hecker, William Hillman, Thomas Eakin, S. H. Alden, Blakeley Wilson, T. R. Butler, G. Francis Opdyke, J. H. Morrison, William Lattimer, George J. Forrest, Effingham Townsend, Felix Thurnauer, Daniel Drew, Uriah J. Smith, Morris Ketchum, George Lockwook, S. L. Husted, B. L. Brittin, John S. Williams, Owen Terry, Thomas F. Mason,
Jarvis Slade, C. E. Detmold, John Kimp, James Filor, W. H. Wall,
181 William H. Fry, Edward Whitehouse, William H. Priest, Henry
Blood, Eben Sutton, John W. Farnum, William Edwards, Charles Caron, W. Irving Adams, E. L. Bolles, L. P. Noble, Charles L. Anthony, Ezra White, Charles L. Anthony, trustee, Walter S. Gurnee, Joseph Fisher, A. M. Richmond, J. S. Briggs, Horace Webster, Henry Lee Norris, Henry Clewes, Albert F. Ryan, George A. Robbins, John B. Hall, H. A. Johnson, William S. Smith, E. T. H. Gibson, Robert Earle, Horace B. Claflin, William Whitewright, jr., Levi P. Morton, A. Reynes, S. B. Chittenden, William H. De Forrest, William James Quinlan, jr., P. D. F. Grant, Augustus D. Shephard, Charles S. Landon, William Foster, Isaac Hyde, jr., Joseph B. Hoyt, Richard P. Buck, Samuel Titus, William Tilden, Israel Corse, W. M. Vermilye, Hiram Sibley, John
Ward, Aaron Arnold, William P. Griffin, Robert L. Taylor, Ben-
182 jamin H. Hutton, trustee, George Opdyke trustee, and William
F. Lee, to me well known, and severally acknowledged that they executed the foregoing instrument for the purpose therein mentioned. And the said Jay Cooke, David Dows, R. D. Lathrop, Charles L. Anthony, Benjamin H. Hutton, and George Opdyke also severally acknowledged that they executed the said instrument as trustees as well as individually.

And on the sixteenth day of January, in the year of our Lord one thousand eight h undred and sixty-four, before me personally appeared George Opdyke, known to me to be the individual described in the above instrument as the person executing the same as attorney for the Connecticut Life Insurance Co., the Phœnix Insurance Co. of Hartford, the Hartford Fire Insurance Company, Horace O. Moss, Henry S. Root, Tully D. Bowen, Joseph Plummer, William E. Sugden, Duty Greene,
Shubare Hutchins, Augustus H. Moss, S. C. Abel, Amos Hard,
183 William Badger, Ira Gage Barnes, E. W. Clark, Charles T.

Yerkes, Stephen M. Buckingham, Freeman Clark, of Maine, W. T. Gleason, David Milne, William S. Slater, Edward Willmer, William Brown, Myron Clark, J. S. Hopkins, Annie Luden, Francis Hopkins, William T. Page, Gillison Magliee, Robert Barnes, Charles Viele, James Emmett, Horatio Q. Wheeler, and Freeman Clark, respectively, and acknowledged to me that he had executed the said instrument as the act and deed of the said persons severally and respectively, by virtue of the several powers of attorney hereunto annexed from the said persons respectively. And I further certify the said George Opdyke was known to me to be the person named in the said several instruments as the attorney thereby severally and respectively constituted.

In witness whereof I have hereunto set my hand and annexed
184 my seal of office this eighteenth day of January, A. D. one thousand eight hundred and sixty-four.

[SEAL.] WM. S. OPDYKE, *Notary Public.*

STATE OF NEW YORK,
City and County of New York, ss:

I, James Hervey Ackerman, a notary public in and for the county of New York, do hereby certify that on the eleventh day of January, in the year one thousand eight hundred and sixty-four, before me personally came William Cooper, Whitman Phillips, Marcus Spring, David M. Farnum, and Alexander Dalrymple, to me well known, and severally acknowledged to me that they executed the foregoing instrument for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal of office this eighteenth day of January, A. D. 1864.

[SEAL.] (Signed) JAMES HENRY ACKERMAN,
Notary Public.

185 Marked I September 12th, 1868.
(Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, ss:

I certify the foregoing to be a true copy of the original organization certificate of the Fourth National Bank of the city of New York, with the acknowledgments thereof, now on file and of record in this office, and of the whole of such originals, and that such originals were so filed and recorded on the 2d day of April, A. D. 1864.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this 17th day of September, A. D. 1868.

[SEAL] (Signed) JOHN JAY KNOX,
Dep. and Act'g Comptroller of the Currency.

186 *Assignment by Augustus C. Graham to the Fourth National Bank.—Marked "A" on the 14th of September, 1868, by Chas. T. Middlebrook, commissioner.*

[$32 00 U. S. int. rev. stamps affixed and cancelled.]

Know all men by these presents, that I, Augustus C. Graham, of

Flushing, in Queen's County, State of New York, of the first part, for and in consideration of the sum of one dollar to me in hand paid by the Fourth National Bank of the City of New York, of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of
187 the second part, its successors and assigns, all the right, title, and interest of and in a certain indenture of lease made by the New Orleans and Carrollton Railroad Company to Gustave Toutaut Beauregard, dated the twelfth day of April, one thousand eight hundred and sixty-six, and recorded in the conveyance office of the parish of Jefferson, in the State of Louisiana, in Book II, fol. 312, on April 19th, 1866, to which I may be entitled by virtue of certain articles of copartnership made between said Gustave Toutaut Beauregard and Thomas P. May, and myself, bearing date the eighteenth day of April, 1866, or otherwise; and also, all my right and interest in any property or effects of said partnership; and also, all debts due to me from the said partnership, or any of the members thereof.

188 In witness whereof I have hereunto set my hand and seal this eighth day of May, in the year one thousand eight hundred and sixty-seven.

(Signed) A. C. GRAHAM. [L. S.]

Sealed and delivered in the presence of—
(Signed) A. A. ALVORD.
B. F. LEE, JR.
MOSES B. MACLAY.

Registered in the conveyance office, parish of Jefferson, on the 15th of May, 1867, in Book I, folio 812.

[SEAL.] (Signed) ERNEST COMMAGERE,
Recorder.

[5c. int. rev. stamp affixed and cancelled.]

UNITED STATES OF AMERICA,
State, County, and City of New York, ss:

I, Moses B. Maclay, residing in the city of New York, a commissioner in said State to take depositions, affidavits, acknowledgements
189 of deeds, powers of attorney, &c., &c., to be used or recorded in the State of Louisiana, duly commissioned and quailfied, do hereby certify and make known, that on the day of the date hereof, before me personally appeared Augustus C. Graham, of the city of New York, known to me to be the person described in, and who executed the annexed assignment, and executed the same in my presence, and in the presence of A. A. Alvord, and B. F. Lee, jr., witnesses of lawful age, residing in the said city, who have subscribed the same with me, and the said Augustus C. Graham acknowledged to me that he executed the same as his act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office this eighth day of May, one thousand
190 eight hundred and sixty-seven.

[SEAL.] (Signed) MOSES B. MACLAY,
Louisiana Commissioner in the City of New York.

Motion and order for publication of testimony.—Extract from the minutes of Thursday, November 12th, 1868.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, and others. } No. 5359.

On motion of Elmore & King, solicitors for complainants, upon suggesting to the court, that commissions having been issued to take testimony in this case, and the same having been returned and the time allowed by law for the taking of testimony having expired, it is
191 ordered by the court, that publication of the testimony in this case be made according to law.

Motion and order cause fixed for trial.—Extract from the minutes of Monday, November 16th, 1868.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company, G. T. Beauregard, & others. } No. 5359.

On motion of Elmore & King, solicitors for the complainants, upon suggesting to the court that said case is regularly at issue for trial, and due time having elapsed for the taking of testimony, and the same having been taken and an order for publication made therein, that the said case be fixed for trial Thursday, the 3d of December, 1868, at 11 a. m., and that the respondents be notified hereof.

192 *Notices of trial.—Issued November 16th, 1868.*

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

You are hereby notified that this case is assigned for trial for Thursday, the 3d day of December 1868, A. D., at 11 o'clock a. m.

By order of court.

Witness my hand and seal of the said court at New Orleans this 16th day of November, A. D. 1868.

[SEAL.] (Signed) F. B. VINOT, *D'y Cl'k.*

To CYPRIEN DUFOUR,
L. E. SIMONDS, and
S. H. TORREY, *U. S. Att'y.*

Marshal's return.

193 Received, November 17th, 1868, by the U. S. marshal, and on same day of November, 1868, served copies of within notice on parties named herein, in manner following, viz:

C. Dufour served personally at office, 84 Bienville street, in this city; L. E. Simonds, on C. Warblum, at office, 14 Exchange place, in this city; U. S. Att'y, on J. Fahy, clerk, at office, custom-house building, in this city.

New Orleans, November 18th, 1868.

(Signed) J. W. SAWYER,
D'y U. S. Marshal.

Order of continuance.—Extract from the minutes of Thursday, December 3d, 1868.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

This cause was called for trial—Elmore & King for complain-
194 ant; C. Dufour & S. H. Torrey, U. S. att'y, for defendants—when, by reason of the illness of Mr. Dufour, the cause is continued till the 17th inst., at 11 a. m.

Affidavit for enlarging time to secure testimony.—Filed December 17th, 1868.

U. S. circuit court.

FOURTH NATIONAL BANK OF THE CITY OF NEW York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

Cyprien Dufour, being duly sworn, says that he is counsel for Alexander Bonneval and others, who are the principal parties in interest among the defendants; that he is now recovering from a very serious illness which broke upon him early in the month of September last, and by which he was totally incapacitated from attending to his pro-
195 fessional business; that, for this reason, he has not had any opportunity to secure his testimony within the proper time; and for this cause he respectfully prays that the court may use its discretionary power, and enlarge the time during which he may obtain the required testimony.

(Signed) C. DUFOUR.

Sworn to and subscribed before me this 17th December, 1868.

(Signed) F. B. VINOT, *D'y Clk.*

Order of continuance.—Extract from the minutes of Thursday, December 17th, 1868.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILRORD Co. & als. } No. 5359.

Considering the affidavit of C. Dufour, attorney for A. Bonneval

196 and others, ordered that this cause fixed for this day be continued till the 15th January, 1869, at 11 a. m.; that the time allowed to take testimony be extended until then, and the complainant's attorneys be advised hereof.

Marshal's return.

Received, December 18th, 1868, by the U. S. marshal, and on same day of December, 1868, served copy of within order on Elmore & King, attorneys named herein, in hands of W. W. King, a member of said firm, personally, at U. S. court-room in this city.

New Orleans, December 19th, 1868.

(Signed) S. W. REED, *D'y U. S. Marshal.*

Motion and order to take testimony on behalf of defendants.—Extract from the minutes of Thursday, December 24th, 1868.

FOURTH NATIONAL BANK OF NEW YORK
vs.
197 NEW ORLEANS AND CARROLLTON RAILroad Co. & als. } No. 5359.

On motion of C. Dufour, solicitor for A. Bonneval & als.; and on suggesting to the court, that Thomas P. May, is a material witness for the defence, and that the said witness resides in the parish of , in this State, ordered by the court that D. Urban be appointed commissioner to take the testimony of said witness, at such time and place as the said commissioner may determine, with power to issue all necessary process to secure the attendance of said witness.

Notice to take testimony.—Issued December 28th, 1868.

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
198 NEW ORLEANS AND CARROLLTON RAILroad Co. & als. } No. 5359.

To Elmore & King, esq's:

You are hereby notified that testimony will be taken in the above-entitled cause on Wednesday, the 30th day of December, 1868, at the clerk's office of this court, at 11 o'clock a. m., on behalf of defendants, before me.

New Orleans, December 28th, 1868.

(Signed) D. URBAN, *U. S. Commissioner.*

Marshal's return.

Received, December 28th, 1868, by the U. S. marshal, and on same day of December, 1868, served copy of within notice on Elmore and King, attorneys named herein, in hands of W. W. King, a member of said firm, personally, opposite (on banquet) No. 54 Magazine street, in this city.

New Orleans, December 29th, 1868.

(Signed) S. W. REED, *D'y U. S. Marshal.*

199 *Testimony for defendants.—Filed December 30th*, 1868.

U. S. circuit court.

FOURTH NATIONAL BANK OF THE CITY OF NEW York
vs.
NEW ORLEANS AND CARROLLTON R. R. Co., G. T. Beauregard, & als.
No. 5359.

Testimony on behalf of defendants, taken before D. Urban, U. S. commissioner, as per order on file, and in presence of S. H. Torrey, U. S. attorney, present for U. S.; L. E. Simonds, present for defendant Beauregard and N. O. & Carrollton R. R. Co.; C. Dufour, present for other defendants; Elmore & King, of counsel for plaintiff.

This testimony taken subject to all legal exceptions.
"This reference approved."

D. URBAN, *Clerk.*

G. T. Beauregard, being duly sworn, says, on behalf of certain defendants by C. Dufour, and on behalf of the U. S. government by S. H. Torrey, U. S. att'y:

200 I am the lessee named in the lease "A," annexed to complainant's bill; I was the manager of the business of the road as lessee, in behalf of all concerned. As lessee I entered into a partnership with T. P. May and A. C. Graham, as set forth in the bill. We had the railroad improvements on the track; the purchases of horses and mules for use of the road; the new street cars which were purchased to take the place of the steam cars, and harnesses appertaining thereto; "the change of horse cars instead of steam cars was then progressing;" buildings and other improvements on real estate, to wit, the stables and other buildings, on a square at the corner of Napoleon avenue and St. Charles, more particularly described as follows:

"A certain square of ground, together with the improvements
201 thereon, and all the rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situate in the city of Jefferson, parish of Jefferson, in said State of Louisiana, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades, and Appollo streets, and containing twenty-four lots numbered from one to twenty-four, inclusive, in conformity with a lithographic plan deposited in the office of Adolph Mazureau, a notary in said city of New Orleans;" the improvements put thereon, by the lessee and his associates, consisting of such as stables, building for residence of employees, sheds, &c.

2. The square of ground with improvements described as follows: "A certain square of ground with all the buildings, improvements,
202 rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, situate in the city of Jefferson, parish of Jefferson, in the State of Louisiana, designated by the number sixty-six, on a lithographic plan deposited in the office of Adolphe Mazureau, a notary in the city of New Orleans; the said square comprised between Nayades, Appollo, Milan, and Berlin streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive."

These two squares just described were purchased by Beauregard and his associates, after the formation of the partnership, as per acts of sale, copies of which are to be hereto annexed, marked Z^1 & Z^2.

There was at the corner of Napoleon avenue and St. Charles street, in the parish of Jefferson, an [an] other square of ground which the lessee and his associates had the use of under their lease from [from] the Car-
203 rollton R. R. Co. All the improvements of material value on said squares were put thereon by the lessee and his associates. All of the improvements on said squares were completed prior to the 1st May, 1867.

We bought the Carrollton Hotel, situate at Carrollton, together with the grounds described as follows:

"A certain piece or portion of land situate in the town of Carrollton, parish of Jefferson, in said State, being a triangular, bounded by Levee street, Carrollton avenue, and First street, and measuring, more or less, five hundred and eighteen feet front on Carrollton avenue, six hundred and eleven feet two inches and one and a half lines front on First street, and seven hundred and ninety-eight feet four inches front on Levee street, together with all the buildings and improvements thereon and
204 appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging," as per act of sale, copy of which is hereto annexed, marked Z^3.

The lessee and his associates also purchased the following property situate in the parish of Orleans, described as follows, and known as the "Horse Station."

"Seven certain lots of ground situate in the First district of said city of New Orleans, in the square bounded by St. Charles, Felicity, Appollo or Carondelet, and Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven, on a plan deposited in the office of S. Magner, a notary in said city, as plan number one hundred and sixteen, according to which plan said lots measure as follows, to wit: Lot No. one, thirty-six feet nine inches front on St. Charles street, by a depth of ninety-four feet between parallel lines. Lots two, three, four, and
205 five, immediately in the rear of said lot No. one, adjoin each other, and measure together about one hundred and thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch on the line nearest to St. Charles street, and contiguous to the rear line of lot No. one, about eighty-two feet six inches on the side nearest to Appollo street, "now Carondelet," and about one hundred and twenty-seven feet nine inches in the rear; and lots six and seven, adjoining each other, and extending back to the rear line of the lots fronting on Felicity street, measure each thirty-one feet eleven inches and five lines front on Polymnia street, by a depth of one hundred and twenty feet between parallel lines; together with all and singular the buildings
206 and improvements thereon, and appurtenances thereof, known as the "Horse Station," and all the rights, ways, servitudes, privileges, and advantages thereunto belonging, or in any wise appertaining," as per act, copy of which is annexed, marked Z^4.

The transfer marked "C," annexed to complainant's bill, being shown to witness, he says that no notice of said transfer, or of any other transfer by Mr. Graham, was ever given to him personally, or as lessee, or as manager of the partnership of the lessee and his associates. No notice of such was served on me in any manner, nor was any such notice left at the office where the business of the partnership was conducted.

I had notice of the assignments marked 1, 2, and 3, and annexed to the answer of Bonneval et als.; those assignments were made
207 with my knowledge and approval at the time. These assignments are from T. P. May, for himself, and as attorney in fact of Graham to the U. S. government, and from the government to Bonneval et als.

(Cross-examination waived by plaintiffs' counsel.)

(Signed) G. T. BEAUREGARD.

Sworn to and subscribed before me this 30th December, 1868.

(Signed) D. URBAN, *U. S. Comm'r.*

Testimony for defendants.—Filed January 4th, 1869.

U. S. circuit court.

FOURTH NATIONAL BANK OF THE CITY OF New York *vs.* N. O. & CARROLLTON R. R. Co., G. T. BEAUREGARD, and others. } No. 5359.

Testimony on behalf of defendants, taken before D. Urban, U. S.
208 commissioner, as per order on file, and in presence of S. H. Torrey, U. S. attorney, present for United States; L. E. Simonds, present for defendant Beauregard, and N. O. & Carrollton R. R. Co.; C. Dufour, present for other defendants; Elmore & King, of counsel for plaintiff.

T. P. May, being duly sworn, says:

Question by Dufour & Torrey, U. S. dist. att'y.: By public act before A. Hero, jr., notary public, you have assigned to the government of the United States the rights, titles, and interest of yourself, and of Augustus C. Graham, in and to the Carrollton Railroad Company, and the property, stock, and appurtenances thereto belonging; please state by virtue of what power you have in the said assignments acted for Mr. Augustus C. Graham.

209 Answer. By the advice of my counsel I decline to testify in this case, upon the ground that my testimony may tend to my disadvantage and injury in the cases of the U. S. vs. me, now pending upon indictment in this court.

2d question. If you had any such power, was it by public act or under private signature?

Answer. I decline answering for the same reasons as above stated.

3d question. I perceive in one of these assignments a reference to a power of attorney deposited in the office of Mr. Stark, notary public; please state if that power is genuine, and if it is the only one given to you by Mr. Graham.

Answer. I decline answering for the same reasons as above stated.

4th question. At the time you passed the two assignments
210 above mentioned to the government of the United States, to wit, on the 14th and 16th May, 1867, had you any knowledge of an assignment made in New York by Mr. Graham himself, to the Fourth National Bank of the City of New York, of his own rights, title, and interest in the said railroad.

Answer. I decline answering for the same reasons as above stated.

5th question. By an act of copartnership betwee n G. T. Bauregard and Thomas P. May and A. C. Graham, passed before Amedee Ducate notary public, on the 18th April, 1866, you and Augustus C. Graham have agreed to furnish the amount of money necessary to carry out the enterprise; please state if Mr. Graham paid his share out of his own funds, or whether you did not pay either in part or in whole for Mr. Graham.

Answer. I decline answering for the same reasons as above stated.

211 6th question. What was the object or reason as understood between you and Mr. Graham, for his giving you a power of attorney mentioned above, with regard to his interest in the railroad?

Answer. I decline answering for the same reasons as above stated.

7th question. Was it or not because you had paid either in whole or in part Mr. Graham's share of liabilities, that he gave you this power of attorney?

Answer. I decline answering for the reasons above stated.

8th question. Upon which bank did you draw for paying your own interest, and upon which bank was Mr. Graham's payment drawn for, and whether by you or him?

Answer. I decline answering for the reasons above stated.

212 9th question. If these liabilities under the copartnership were not paid for in checks but were drawn for directly by Mr. Beauregard, who placed the funds in the bank to the credit of Mr. Beauregard?

Answer. I decline answering for the reasons above stated.

10th question. Please state in what way your answering to any of the above interrogatories will or may injure you in your cases now pending with the government?

Answer. I decline stating my reasons on the same grounds above mentioned.

(Before this testimony was taken, it was agreed by all counsel present, that it was to be taken subject to all legal exceptions.)

(Signed) T. P. MAY.

Sworn to and subscribed before me this 4th January, 1869.

(Signed) D. URBAN,
U. S. Commissioner.

213 C. Dufour offers in evidence a duplicate copy of the title from the government to A. Bonneval and others, with the certificate of registry, both in the conveyance office of the parish of Orleans, and in the recorder's office of the parish of Jefferson, at the foot of said copy, which copy is hereto annexed, marked Y, and filed by the commissioner.

(Signed) D. URBAN,
U. S. Commissioner.

Document Y above referred to contains the following additional certificate, viz:

Registered B. K, fol. 384, '85, and '86.

Parish of Jefferson, 31st December, 1868.

(Signed) THOMAS McCORMACK, *Recorder.*

Which said document Y is to be found transcribed at page 60 as Exhibit No. 1.

Rule on T. P. May and order thereon.—Extract from the minutes of Tuesday, January 12th, 1869.

214 FOURTH NATIONAL BANK OF THE CITY OF New York *vs.* NEW ORLEANS AND CARROLLTON RAILROAD CO. & als. } No. 5359.

On motion of S. H. Torrey, United States district attorney, and of

C. Dufour, solicitor of A. Bonneval and others, defendants herein, and upon representing to the court that Thomas P. May, of the parish of St. John the Baptist, having been duly summoned as a witness for said defendants, before commissioner D. Urban, in pursuance of the order of this court, did appear before said commissioner and systematically declined to answer all and every one of the questions propounded unto him, as is shown by the return of said commissioner on record in this honorable court, it is ordered by the court that Thomas P. May be summoned to appear in open court, on Friday next, 15th instant,
215 at 11 o'clock a. m., to show cause why he should not be ordered to answer all or any of said interrogatories under pain of a contempt of court.

Order thereon: Let the within order be made returnable on the 27th instant.

February 24th, 1869.

(Signed) E. H. DURELL, *Judge.*

Marshal's return.

Received, February 24th, 1869, by the U. S. marshal, and on the 27th day of same month and year, served copy of within rule on Thos. P. May, personally, at office of Whitaker and Rice, No. 37 Camp street, in this city.

New Orleans, February 27th, 1869.

(Signed) A. FREDERICK,
Sp'l D'y U. S. Marshal.

Order of continuance of cause.—Extract from the minutes of Friday, January 15th, 1869.

216 FOURTH NATIONAL BANK OF NEW YORK *vs.* NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

For want of time, it is, on motion of Elmore & King, attorneys for plaintiffs, ordered that this cause be continued till Friday, 22d instant, at 11 a. m., and that the defendants be notified hereof.

Notice of trial.—Issued January 15th, 1869.

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

FOURTH NATIONAL BANK OF THE CITY OF New York *vs.* NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

You are hereby notified that this case is continued for trial for Friday the 22d day of January, 1869, A. D., at 11 o'clock a. m.

By order of court.

217 Witness my hand and seal of the said court, at New Orleans, this 15th day of January, A. D. 1869.

[SEAL.] (Signed) F. B. VINOT, *D'y. Clerk.*

To C. DUFOUR, L. E. SIMONDS, S. H. TORREY, *U. S. Att'y.*

Marshal's return.

Received, January 16th, 1869, by the U. S. marshal, and on same day of January, 1869, served copies of within notice on parties herein as follows:

S. H. Torrey, in hands of John Fahy, clerk, office in custom-house building in this city; C. Dufour, in hands of Stella Dufour, at office 84 Bienville street in this city; L. E. Simonds, in hands of H. Harding, clerk, 14 Exchange place in this city.

New Orleans, January 16th, 1869.

(Signed) S. W. REED, *D'y U. S. Marshal.*

218 *Petition for commission.—Filed January 23d, 1869.*

U. S. circuit court.—In chancery.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS & CARROLLTON RAILROAD CO. & als.

And now comes P. H. Morgan, who alleges that he is the United States attorney for this district; that heretofore, to wit, on the 3d day of July, 1868, his predecessor in office moved the court to be allowed to represent certain defendants herein, viz, Joseph Hernandez, G. W. Binder, Alexander Bonneval et als.; and that an order to that effect was entered of record.

That the case was assigned for trial on the 22d of January, 1869; that it was not reached for want of time, and was continued without a day.

He alleges that he does not consider the case in its present
219 condition ready for trial; and he avers that the testimony of A. C. Graham, who resides in New York, is material and necessary to make out the defendants' case; he avers that true it is that said Graham has been examined under a commission, but he alleges that his cross-examination was not sufficiently searching, and that he expects to prove by the said Graham that the property sold by T. P. May to the United States was, at the time of the transfer thereof, and had always been, his property, and that this was known to the Fourth National Bank when Graham transferred the property aforesaid to said bank; that said Graham has testified that he transferred the property referred to, to the plaintiff as security for a debt, but none of the particulars of that debt have been given, and that further enquiry thereupon is essential to the justice of the case. He avers that from the evidence,
220 Graham claims to have given a guarantee to the plaintiff for the acceptance or payment of certain bills drawn by the First National Bank of New Orleans upon the plaintiff, and which were paid by the latter without funds of the drawer; and he avers that Charles Case is the receiver of the First National Bank of New Orleans; that his testimony is essential to the defendants to explain the nature of the dealings between the said two banks, and that the said Charles Case is temporarily absent from the State of Louisiana.

Wherefore he prays for a commission to examine the said A. C. Graham, directed to any U. S. commissioner for the city of New York; and that a delay of thirty days be granted for the return thereof, and that in the meanwhile this suit be not fixed for trial.

(Signed) P. H. MORGAN, *U. S. Att'y.*

Order on foregoing petition.

221 Let a commission issue in this case addressed to any U. S. commissioner in the city of New York, to take the deposition of the witnesses named herein.

January 23d, 1869.

(Signed) E. H. DURELL, *Judge.*

Notice to cross-interrogatories.—Issued January 26th, 1869.

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

To Elmore & King, attorneys for plaintiff:

Take notice that the U. S. attorney has this day filed supplemental interrogatories to A. C. Graham, P. C. Calhoun, and Phillip Sea-
222 man, witnesses residing in the city of New York, copy whereof accompanies this notice, and that you may, if you think proper, put such cross-interrogatories as are requisite and fit, and file the same in this court within ten days from the service hereof.

Clerk's office, New Orleans, January 26th, 1869.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received, January 27th, 1869, by the U. S. marshal, and on same day of January, 1869, served copy of within notice, interrogatories accompanying same, on Elmore and King, attorneys named herein, on W. W. King, a member of said firm, personally, at office corner of Natchez and Magazine streets in this city.

New Orleans, January 28th, 1869.

(Signed) S. W. REED, *D'y U. S. Marshal.*

223 *Commission for the United States.—Issued February 18th, 1869; returned and filed March 16th, 1869.*

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To Charles T. Middlebrook, commissioner, or to any other commissioner in the city of New York:

Know ye that, reposing special trust and confidence in your integrity and ability, we hereby authorize and require you, that you call and cause to come before you A. C. Graham, P. C. Calhoun, and Philip Seaman, witnesses residing in New York, and them duly examine on the annexed interrogatories on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein the Fourth National Bank of the City of New York is plaintiff,
224 and the New Orleans and Carrollton Railroad Co. & others are defendants, and the same examinations so taken and reduced to

writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 18th day of February, anno Domini 1869, and the 93d year of the independence of the United States of America.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Interrogatories annexed to foregoing commission.

U. S. circuit court.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als.

Interrogatories to be exhibited to A. C. Graham, P. C. Calhoun, and Philip Seaman, witnesses residing in New York, in the suit of 4th
225 National Bank of New York vs. New Orleans and Carrollton Railroad Company & al., pending in the circuit court of the United States in the district of Louisiana.

1st. You have stated, on your former examinations in this case, that you had paid the money specified in the contract between G. T. Beauregard, T. P. May, and yourself, for the lease of the said railroad and appurtenances. State with exactness the sums of money paid by you, to whom they were paid, the date of every payment, the form of payment, and set forth all the receipts, acknowledgements, and vouchers you have of the same from either of your partners.

2d. You have stated, in your former depositions, that you
226 made a guarantee to the plaintiff, of certain bills drawn by the First National Bank of New Orleans upon the 4th National Bank of New York. Set forth, in your answer, the exact terms of that guarantee; when was it made; to whom addressed, and what was the cause or motive for making it. In what manner were you concerned or interested in the bills drawn, and who required or obtained the guarantee? Attach a copy to your answer. Set forth, in your answer, an exact statement of all the bills comprehended in it, by dates, amounts, and parties to the same.

3d. You have stated that the bills were drawn and have been protested, which were given for said drafts; describe all of such by dates, amounts, and parties, that were given by you on account of any bills comprehended by your guarantee to the 4th National Bank.

4th. What is your debt to the 4th National Bank, and upon
227 what account was that debt made?

5. When did you hear of the failure of T. P. May? Did he, in any letter, inform you of the probability of his failure, or make any request of you relative to the lease? Attach to your answer all letters of T. P. May, between the dates of the 1st of March, 1867, and the 1st of June, 1867, and all telegrams to you that in any manner refer to or relate to said lease. Do you answer that the letters and telegrams to you contain all communications to you by said May relative to the same?

6th. Do you know anything of bills drawn upon you by said May for seventy-five thousand dollars, which were entered on the books of the First National Bank of New Orleans, but which were never forwarded, or which cannot be found? Attach to your answer to this inter-
228 rogatory all letters or communications to you on the subject.

7th. What moneys, notes, drafts, or property have you, either of said T. P. May or of the First National Bank? What is your debt to either, and when was it contracted; how?

8th. Is it not a fact that the said May took conveyances for property in your name, but for himself? Was not the lease of the New Orleans and Carrollton Railroad Co. taken in this manner?

9. Were you at any time a bona fide owner of the lease, or a bona fide contractor in said contract; but were you not merely an instrument of said May, and was not your name employed for his use?

(Signed) P. H. MORGAN,
U. S. Att'y.

CLERK'S OFFICE:

A true copy of the original on file. New Orleans, February 18, 1869.
[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

229 *Testimony taken under the foregoing commission.*

Circuit court of the United States for the fifth judicial district.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs
NEW ORLEANS AND CARROLTON RAILROAD Company, et al.

STATE OF NEW YORK, *City and County of New York, ss:*

Examination of A. C. Graham, P. C. Calhoun, and Billopp (Philip) Seaman, in answer to the interrogatories annexed to a commission from the above circuit court of the United States, dated the 18th day of February, 1869, and addressed to Charles T. Middlebrook, commissioner.

On this 10th day of March, 1869, before me came A. C. Graham, P. C. Calhoun, and Billopp Seaman, who being severally sworn did depose and say:

230 The said A. C. Graham answers to the interrogatories as follows, viz:

To the first interrogatory. On the 4th day of May, 1866, I paid $20,000 to G. T. Beauregard, lessee, by checks to his order upon First National Bank of New Orleans, a copy of which is hereto annexed, marked Exhibit I. On the 8th day of May, 1866, $20,000, by my check upon same bank, drawn by my attorney, T. P. May, when I was absent from New Orleans, for $30,000, which included the said $20,000; a copy of which check is hereto annexed, marked Exhibit II. On the 9th of June, 1866, $20,000, by my check drawn upon same bank by my attorney, T. P. May—being still absent from New Orleans—to the order of G. T. Beauregard, lessee; a copy of which check is hereto annexed, marked Exhibit III. On the 10th of July, 1866, $20,000, by my check to the order of G. T. Beauregard, lessee, upon same bank; a copy
231 of which is hereto annexed, marked Exhibit IV.

In addition to the above sums, subsequent to the date of the last check, T. P. May, as this deponent's attorney, in various ways, by checks and drafts, applied upon the contract mentioned in this 1st interrogatory $50,000, and upwards, the particulars of which I am unable to give, never having received from Mr. May any account or information respecting his action or payments as my attorney under power mentioned, except that in an account furnished by said Beauregard, under date of March, 1867, of the copartnership transactions between said Beauregard, May, and myself, the said Beauregard credited this deponent with funds furnished to said copartnership with the sum of $131,474 90.

To 2nd interrogatory. The only guarantees which I ever
232 gave to the Fourth National Bank of New York, for any purpose or object whatever, were given on the 27th of April, 1867, and on the 7th of May, 1867, true copies of which are hereto annexed, marked Exhibits V & VI; that the object of giving said guarantees, to whom it was given, and the cause of it, appear from the terms thereof; that there were very extensive dealings and transactions direct between the 1st National Bank of New Orleans and the 4th National Bank of New York, all of which were covered by said guarantees, and it is impossible for me to give the particulars thereof from any documents, accounts, or vouchers in my possession; that I had no interest in any bill or bills covered by said guarantees; that I gave the guarantees at the request of the president of the 4th National Bank, and because
233 this deponent was the agent in New York of the 1st National Bank of New Orleans, and wished to sustain its credit.

To third interrogatory. That this deponent is unable to answer this interrogatory, not knowing what drafts or bills are therein referred to.

To fourth interrogatory. This deponent is not indebted to the 4th National Bank in any amount whatever, otherwise than contingently upon the guarantees mentioned, nor was he so indebted at the time of the failure of the 1st National Bank of New Orleans; on the contrary thereof, this deponent, as a depositor, had in said 4th National Bank a balance in his favor of $25,000 and upwards, which this deponent consented might remain and be held by the said 4th National Bank of New York to secure it for any balance that might be due to it from the 1st National Bank of New Orleans.

234 To fifth interrogatory. On or about the 13th of May, 1867, I heard of the failure of T. P. May. About this time I had information that said May was greatly pressed for money, but I have no recollection of being informed of the probability of his failure; that said May did not make any request to me relative to the lease referred to in this interrogatory. I have no recollection or belief of receiving any letter or telegrams from said May between the 1st of March, 1867, and the 1st of June, 1867, referring to or relating to said lease.

To sixth interrogatory. I have no knowledge of any bills drawn on me for $75,000, and can make no other answer to this interrogatory.

To seventh interrogatory. I have no monies, notes, drafts, or property, either of T. P. May or the 1st National Bank of New Orleans. I am not indebted to said bank; but on the settlement of the claims
235 and demands of said bank against me, I joined with my brother, Malcolm Graham, in giving four notes to the receiver of said bank, amounting in the aggregate to nineteen thousand dollars, and there is an unsettled account between me and said May, embracing many transactions, and which accounts cannot be closed until said May gives a statement of his action under my power of attorney to him, and my belief is that I owe him nothing.

To eighth interrogatory. T. P. May did not take a conveyance in my name for himself of the lease of the New Orleans and Carrollton Railroad Company, nor do I know of his having taken a conveyance of any property in my name but for himself.

To ninth interrogatory. I was a bona fide owner of one-half of the lease mentioned in this interrogatory, and a bona fide party to
236 the articles of copartnership between me, Beauregard, and May, respecting said lease.

A. C. GRAHAM.

Sworn to before me this 10th day of March, 1869.
(Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

Copy of checks referred to in the annexed examination.

EXHIBIT I.

NEW ORLEANS, *May 4th*, 1866.

The First National Bank of New Orleans pay to the order of G. T. Beauregard, lessee, twenty thousand dollars.
$20,000. A. C. GRAHAM.

(Endorsed:) Richard Proctor, for G. T. Beauregard.

EXHIBIT II.

NEW ORLEANS, *May 8th*, 1866.

First National Bank of New Orleans pay to cash, or bearer, thirty thousand dollars.
$30,000. A. C. GRAHAM,
Per pro T. P. MAY.

(Not endorsed.)

237 EXHIBIT III.

NEW ORLEANS, *June 9th*, 1866.

First National Bank of New Orleans pay to the order of G. T. Beauregard, lessee, twenty thousand dollars.
$20,000. A. C. GRAHAM,
Per pro T. P. MAY.

(Endorsed:) G. T. Beauregard, per T. P. May.

EXHIBIT IV.

NEW ORLEANS, *July 10th*, 1866.

The First National Bank of New Orleans pay to the order of G. T. Beauregard, lessee, twenty thousand dollars.
$20,000. A. C. GRAHAM.

(Endorsed:) G. T. Beauregard, per A. C. Graham.

EXHIBIT V.

NEW YORK, *April 27th*, 1867.

For and in consideration of one dollar in hand paid, and other valu-

able considerations, we hereby guarantee to the Fourth National
238 Bank of the City of New York against loss for any over-drafts or other advances that it has made or may make up to the 4th day of May next, to the First National Bank of New Orleans.

(Signed) A. C. GRAHAM.
F. I. HERRON.

[10-cent stamp.]

EXHIBIT VI.

NEW YORK, *May 7th*, 1867.

For and in consideration of one dollar in hand paid, and other valuable considerations, I hereby guarantee the Fourth National Bank of the City of New York against loss for any over-drafts or other advances that it has made or may make to the First National Bank of New Orleans, until the said First National Bank has relieved said 4th National Bank of all indebtedness; the said 4th National Bank agreeing to notify me daily of said indebtedness at my place of business No. 3 Broad street, New York.

(Signed) A. C. GRAHAM.

[10-cent stamp.]

239 EXHIBIT VII.

NEW YORK, *May 7th*, 1867.

For and in consideration of one dollar in hand paid, and other valuable considerations, I hereby guarantee the Fourth National Bank of the City of New York against loss for any over-drafts or other advances that it has made or may make to the First National Bank of New Orleans, until the said First National Bank has relieved said Fourth National Bank of all indebtedness; the said 4th National Bank agreeing to notify me daily of said indebtedness at my place of business, No. 3 Broad street, New York.

(Signed) A. C. GRAHAM,
Ag't of 1st Nat. B'k of N. O.

[10-cent stamp.]

The said P. C. Calhoun answers to the interrogatories as follows, viz:

240 To the first interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the second interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the third interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the fourth interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the fifth interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the sixth interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the seventh interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the eighth interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the ninth interrogatory. I cannot answer this question;
241 it does not seem to be addressed to me.

(Signed) P. C. CALHOUN.

Sworn to before me this 10th day of March, 1869.

(Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

The said Billopp (Phillip) Seaman answers to the interrogatories as follows, viz:

To the first interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the second interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the third interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the fourth interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the fifth interrogatory. I cannot answer this question;
242 it does not seem to be addressed to me.

To the sixth interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the seventh interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the eighth interrogatory. I cannot answer this question; it does not seem to be addressed to me.

To the ninth interrogatory. I cannot answer this question; it does not seem to be addressed to me.

(Signed) BILLOPP SEAMAN.

Sworn to before me this 10th day of March, 1869.

(Signed) CHAS. T. MIDDLEBROOK,
Commissioner.

STATE OF NEW YORK,
City and County of New York, ss:

I certify that, on the 10th day of March, A. D. 1869, A. C.
243 Graham, P. C. Calhoun, and Billopp (Philip) Seaman personally appeared before me, the commissioner named in the annexed writ, and, being by me severally sworn, made answer to the annexed interrogatories in the matter of the suit of the Fourth National Bank vs. New Orleans and Carrollton Railroad Company et al., pending in the circuit court of the United States in the district of Louisiana; and I further certify that I reduced the said examinations to writing, and that the same are annexed to this commission.

(Signed) CHAS. T. MIDDLEBROOK, [L. S.]
Commissioner.

Motion and order.—Extract from the minutes of Monday, February 8th, 1869.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS & CARROLLTON RAILROAD CO. & others. } No. 5359.

244 On motion of Elmore & King, solicitors for complainant, and upon suggesting to the court that this cause has been repeatedly

continued at the request of respondents, and the two last times it was fixed it was continued for want of time, ordered that said cause be set for trial on Monday, 15th instant, at 11 a. m., and that respondents be notified hereof.

Notice of trial.—Issued February 8th, 1869.

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILroad Co. & als. } No. 5359.

You are hereby notified that this case is assigned for trial for
245 Monday, the 15th day of February, 1869, A. D. at 11 o'clock a. m.
By order of court.

Witness my hand and seal of the said court, at New Orleans, this 8th day of February, A. D. 1869.

[SEAL.] (Signed) F. B. VINOT, *D'y Clk.*

To U. S. Attorney L. E. SIMONDS, C. DUFOUR.

Marshal's return.

Received, February 9th, 1869, by the U. S. marshal, and on same day of February, 1869, served copies of within notice on parties named herein in the manner following, viz:

U. S. attorney, personally, on banquet, opposite corner of Canal and Old Levee street, in this city.

C. Dufour, at office, 84 Bienville street, in this city.

L. E. Simonds, in hands of Chas. Carrere, at office, 14 Exchange place, in this city.

New Orleans, February 11th, 1869.

(Signed) S. W. REED, *D'y U. S. Marshal.*

246 *Motion and order fixing cause.—Extract from the minutes of Saturday, March 13th, 1869.*

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILroad Co. & als. } No. 5359.

For want of time, it is, on motion of Elmore & King, attorneys for plaintiff, ordered that the cause be assigned for trial on the 6th April, 1869, at 11 a. m., and that defendants be notified hereof.

Notice of trial.—Issued March 13th, 1869.

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILroad Co. & als. } No. 5359.

247 You are hereby notified that this case is assigned for trial for Tuesday, the 6th day of April, 1869, A. D., at 11 o'clock a. m.
By order of court.

Witness my hand and seal of the said court, at New Orleans, this 13th day of March, 1869.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

To L. E. SIMONDS, C. DUFOUR, P. H. MORGAN, *U. S. Att'y.*

Marshal's return.

Received, March 15th, 1869, by the U. S. marshal, and on same day of March, 1869, served copies of within notice on parties named herein in manner following, viz:

L. E. Simonds, in hands of L. Hardy, office 14 Exchange Place.

C. Dufour, in hands of E. Burthe, student, office 84 Bienville street.

U. S. attorney, in hands of J. W. Gurley, clerk, at office of U. S. marshal.

New Orleans, March 15th, 1869.

248 (Signed) J. W. SAWYER,
D'y U. S. Marshal.

Motion and order.—Extract from the minutes of Monday, March 29th 1869.

FOURTH NATIONAL BANK OF NEW YORK *vs.* NEW ORLEANS AND CARROLLTON RAILROAD CO. & ALS. } No. 5359.

On motion of Elmore & King, solicitors for complainants, and upon suggesting to the court that the respondents have recently taken the testimony of witnesses which the complainants are desirous of rebutting, it is ordered that a commission issue to the clerk of this court, as commissioner, to take testimony in behalf of complainants.

Notice to take testimony.—Issued March 29th, 1869.

United States circuit court, district of Louisiana.

249 FOURTH NATIONAL BANK OF NEW YORK *vs.* NEW ORLEANS AND CARROLLTON RAILROAD & ALS. } No. 5359.

To H. C. Miller, C. Dufour, L. E. Simonds, and P. H. Morgan, U. S. attorney:

You are hereby notified that testimony will be taken in the above entitled cause on Friday, the 2d day of April, 1869, before D. Urban, U. S. commissioner, at 10 o'clock a. m., on behalf of complainant, at office of C. Case, over bank, corner of Natchez and Magazine streets.

New Orleans, March 29th, 1869.

[SEAL.] (Signed) F. B. VINOT. *D'y Clerk.*

Marshal's return.

Received, March 29th, 1869, by the U. S. marshal; and on same day of March, 1869, served copies of within notice on parties named herein in manner following, viz:

250 C. Dufour, personally, at U. S. court room; L. E. Simonds, left on desk at office, 14 Exchange place; H. C. Miller, left on desk at office, 30 Camp street; P. H. Morgan, in hands of J. W. Gurley, clerk, at office in custom-house.

New Orleans, March 29th, 1869.

(Signed) J. W. SAWYER,
D'y U. S. Marshal.

Testimony on behalf of complainant.—Filed April 2d, 1869.

U. S. circuit court.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD CO. & AL. } No. 5359.

Testimony in above cause, on behalf of complainant, taken before D. Urban, U. S. commissioner, at office of C. Case, esq.

Present, Elmore and King for complainants; present, H. C.
251 Miller, of counsel for Binder, Bonneval, and Hernandez, and other defendants; absent, P. H. Morgan, U. S. att'y.

Louis Meigs, being duly sworn, says:

I was exchange clerk up to January, 1867, and, from that time to the suspension, was acting cashier of 1st National Bank of New Orleans.

(Counsel for defendants objects to all evidence of entries and accounts in books of 1st National Bank upon the ground said books are no evidence against them; that they are res inter alios.)

Witness's attention being called to account of G. T. Beauregard, lessee, with 1st National Bank, finds on April 16th, 1866, a credit of $20,000; and on May 4th, 1866, a credit of $20,000; and on 9th June, 1866, a credit of $20,383 65.

252 Witness being asked to examine A. C. Graham's account, says, that on the 4th May, 1866, Mr. Graham was charged with $20,000 00, and on 9th June, 1866, $20,000 00; those charges were for sums drawn out by him; also on July 10th, 1866, Graham was charged with $20,000 00, and Beauregard credited on same day with $20,000 00. The $383 65 in the item of $20,383 65, deposited to Beauregard's credit, might have been the daily receipts of the railroad on that day deposited with the $20,000 00. May 8, 1866, Graham is charged with $30,000 00. All these charges against Graham were for checks drawn by him.

(Counsel for defendants objects to any evidence in regard to the checks, on the ground that the checks themselves ought to be produced.)

On the 15th September, 1866, Mr. Beauregard's ac. was credited
253 with $40,263 70, whereof $40,000 00 were in a loan, and the balance railroad deposits. If the $40,000 00 had not been deposited the ac. would have been overdrawn about $40,000 00; the exact amount overdrawn on making the calculation is $32,604 89.

That credit of $40,000 00 was placed to Beauregard's credit on ac. of a demand note given by May under a power of attorney of Beauregard.

(Defendants object to any evidence in regard to the power of attorney, on the ground that the power of attorney being the best evidence, should be produced.)

The said note being produced by C. Case, receiver of 1st National Bank, witness recognizes that as the note, and the genuineness of May's handwriting in the signature thereto; and that the annexed document marked A[3] is a correct copy of the original note.

254 This note was not discounted; it was counted as money, and it remained in the possession of the bank up to the time of the suspension.

On 19th March, 1867, G. T. Beauregard, lessee's, ac. was overdrawn $122,219 99.

On 19th March, 1867, an examiner of national banks was in 1st National Bank of New Orleans to examine books and valuables of the bank, and as such a large overdraft was against national bank law an exchange was drawn by Thos. P. May, on A. C. Graham at New York, at 45 days' date, for $125,000 00, and a cash check given for the same at par, and placed to the credit of Beauregard, lessee.

The draft being produced by C. Case, receiver 1st National Bank, witness says he recognizes that as being the draft for $125,000 00 above spoken of, of which the annexed document marked A[4] is a correct copy.

255 This draft was counted as assetts of the bank.

The said draft was never stamped nor never used by the bank in any way, and remained in my possession up to the suspension of the bank.

The $40,000 00 note of Beauregard, lessee, and the entries in relation to it were made by the orders of the president, and I think A. C. Graham was president at the time.

The $125,000 draft, the entries in reference to it were made by Mr Forbes, who was president at the time; but Mr. May was present at the time, and it was arranged between them.

These transactions in relation to the note and draft were never submitted to the board of directors; in fact, towards the close of the bank, the directors had not met for two months previous to its suspension.

256 At the time of the suspension Beauregard's ac. as lessee was overdrawn $72,008 89 and has never been settled to my knowledge. In stating this amount, I mean after crediting him with the $40, 000, and $125,000 00.

Being shown document marked A[5] says it is a correct copy of the ac. of Beauregard as lessee, with the 1st National Bank of New Orleans.

Cross-examined by defendants, (who reserve all legal objections:)

I have no personal knowledge of the payment to Beauregard, as lessee of the credits in that ac. referred to by me. I have no knowledge of the debits in Graham's ac. to which I have referred, except from the ledger of the bank. My knowledge upon these subjects is derived from the books of the bank before me. I did not keep the books from which I have testified.

257 At the time that A. C. Graham's ac. was debited with $20, 000, of date May, 4th. 1866, there was to his credit $70,092 93.

A. C. Graham's ac. with the 1st National Bank closes on March 7th, 1867. He was then overdrawn and owed the bank a balance of $7,214 79. The $125,000 of exchange, to which I referred, was never charged in his account. The exchange was never sent to him, and never paid by him. Graham left here for New York, either in September or October, 1866; he has never been here since, and he then ceased to be president of the bank, but acted as agent for the bank in New York. I can't tell under whose orders the credits of May 4th, June 9th, and July 10th, 1866, to which I referred, were given to Beauregard, lessee. After Graham left here in 1866, the credits in the ac. of Beauregard, lessee, were

258 given under the direction of May. I have no personal knowledge of the authority of May to draw the $40,000 note for Beauregard, lessee.

Re-direct:

Mr. May was for a portion of the time president of 1st National Bank, and was a director all the time from its foundation, and took an active part in the administration of its affairs from beginning to the end, and he was one of the original founders of the bank; at one time Mr. May was the largest stockholder in the bank. Mr. May and Graham were the largest stockholders.

(Signed) LOUIS MEIG.

Sworn to and subscribed before me this 2d April, 1869.

(Signed) D. URBAN, *U. S. Comm'r.*

Phillip Helm, being sworn, says:

259 I was the individual book-keeper of 1st National Bank. I kept the accounts of G. T. Beauregard, as lessee, and of A. C. Graham, as they appear in the books of the bank. The accounts are true and correct as I took them from other books. I know that the checks, charged on those accounts are correct. I got them from the receiving and paying teller. I got the credits from the receiving teller, the exchange clerk, and discount clerk—Edward Leeds was the receiving teller—and the checks from Whitmore, the paying teller. Mr. May was president for a portion of the time and always a director.

(Defendants object to all the foregoing testimony as hearsay and derived from the books; that the books themselves and the accounts in them are res inter alios, and not evidence of the matters referred
260 to against these respondents.

Cross-examined:

I have no personal knowledge of the matters referred to in my examination-in-chief; my testimony is derived from the books and other books.

Re-direct:

I handled the checks which I entered on the debit side of the accounts. The credit side I got from the deposit book, discount book, and exchange book. My entries, I know, are made correctly from those books. I knew the handwriting of May and Graham, and knew the checks to be genuine.

(Defendants reserve all objections to the testimony as to checks, on the ground that the checks are the best evidence and ought to be produced.

(Signed) PH. HELM.

Sworn to and subscribed before me this 2d April, 1869.

(Signed) D. URBAN, *U. S. Comm'r.*

261 *Documents marked A³, A⁴, & A⁵, filed with foregoing testimony, and referred to in testimony of Louis Meig.*

DOCUMENT MARKED A³.

[Copy.]

$40,000. NEW ORLEANS, *Sept. 14th*, 1866.

On demand, I promise to pay the First National Bank of New Orleans, or order, forty thousand dollars, for value received, with interest at the

rate of ——— per centum per annum from date until paid, having deposited with them, as collateral security for the payment of the same.

G. T. BEAUREGARD, *Lessee*,
Per pro T. P. MAY.

[U. S. int. rev. stamps, twenty dollars.]

Endorsed: "F. J. Herron."

"I do hereby waive protest on the within note.

"F. J. HERRON."

DOCUMENT MARKED A⁴.

[Copy.]

7939.—*Exchange for* $125,000.

1. NEW ORLEANS, *March 19th*, 1867.

262 Forty-five days after sight of this first of exchange, (second unpaid,) pay to the order of myself, one hundred and twenty-five thousand dollars, value received, and charge the same to account of

Yours, trl.,

T. P. MAY.

To A. C. GRAHAM, Esq.,
No. 3 Broad st., New York.

7939.—*Exchange for* $125,000.

2. NEW ORLEANS, *March 19th*, 1867.

Forty-five days after sight of this second of exchange, (first unpaid,) pay to the order of myself, one hundred and twenty-five thousand dollars, value received, and charge the same to account of

Yours, trl.,

T. P. MAY.

To A. C. GRAHAM, Esq.,
No. 3 Broad st., New York.

Endorsed on each: T. P. May.

263 DOCUMENT MARKED A⁵.

[Copy of ac. G. T. Beauregard, lessee, from the books of the 1st Nat. B'k of N. O.]

G. T. Beauregard, lessee, in account with the First National Bank of New Orleans.

Dr.			Cr.		
1866.			1866.		
April 20.	To check	150 00	April 16.	By cash	20,000 00
"	"	100 00	17.	"	495 65
21.	"	50 00	18.	"	498 95
23.	"	100 00			
24.	"	5,921 30	19.	"	412 85
25.	"	208 33	20.	"	385 55
26.	"	967 50	21.	"	392 35
28.	"	150 72	23.	"	1,161 80
28.	"	886 02	24.	"	435 50
30.	"	8,640	25.	"	414 30
May 1.	"	2,716 65	26.	"	1,026 55
2.	"	460	27.	"	388 10
3.	"	1,278 61	28.	"	378 15
"	"	208 33	30.	"	1,325 05

	4.	"		4,039 85
	"	"		1,481 50
	5.	"		920 25
	7.	"		1,251 65
	8.	"		150
	10.	"		39 94
	11.	"		97 65
	12.	"		682 90
	14.	"		522 77
	15.	"		124 62
	16.	"		65
	16.	"		285 36
264	April.	To check		
	17.	"		46 25
	18.	"		4,473 81
	"	"		73 05
	19.	"		859 55
	21.	"		1,286 21
	"	"		100
	22.	"		150
	"	"		55 25
	24.	"		64 97
	25.	"		160 05
	26.	"		800 83
	"	"		100
	28.	"		1,000
	29.	"		1,239 39
	31.	"		500
	June 1.	"		894 99
	2.	"		8,069 68
	4.	"		366
	"	"		2,084 85
	5.	"		622 25
	6.	"		879 73
	7.	"		1,000
	8.	"		1,971 69
	"	"		737 50
	9.	"		2,501 13
	11.	"		5,076 62
	"	"		200
	12.	"		359 07
	15.	"		385 26
	16.	"		392 89
	18.	"		125
265	19.	"		508 15
	22.	"		1,502 34
	23.	"		120
	25.	"		1,623
	28.	"		1,209 54
	"	"		1,000
	29.	"		145
	30.	"		260 75
	July 2.	"		9,846 70
	3.	"		2,254 75
	5.	"		9,554 61
	6.	"		1,567 05
	"	"		464 54
	7.	"		929 68
	"	"		200
	9.	"		2,379 07
	10.	"		1,064 56
	"	"		408 75
	12.	"		1,200
	13.	"		1,108 67
	"	"		90
	14.	"		2,498 43
	16.	"		480 99
	17.	"		208 33
	18.	"		272
	20.	"		307 50
	"	"		100 34
	21.	"		968 75
	"	"		215 50
	23.	"		631
	26.	"		100
	"	"		50
266	27.	"		1,000 00
	28.	"		1,500
	30.	"		846 59
	Aug. 4.	"		11,994 74
	"	"		1,309 91
	6.	"		1,007 06
	7.	"		1,909 26
	8.	"		905 45
	9.	"		140 50
	10.	"		217 15
	11.	"		1,132 20
	13.	"		800

May	1.	"		444 85
	2.	"		455 25
	3.	"		591 30
	4.	"		20,000 00
	"	"		438 50
	5.	"		539 55
	7.	"		1,187 45
	8.	"		509 60
	9.	"		425 57
	10.	"		383 30
	11.	"		363 70
	12.	"		442 25
May	14.	By cash		1,022 50
	15.	"		488 10
	16.	"		681 70
	17.	"		365 10
	18.	"		397 45
	19.	"		406 75
	21.	"		1,429 65
	22.	"		510
	23.	"		417 90
	24.	"		385
	25.	"		360 80
	26.	"		359
	28.	"		1,369 70
	29.	"		426 65
	30.	"		361 15
	31.	"		316 70
June	1.	"		358 75
	2.	"		375 50
	4.	"		1,368 15
	5.	"		497 10
	6.	"		411 80
	7.	"		499 60
	8.	"		408 15
	9.	"		20,383 65
	11.	"		1,245 40
	12.	"		465 15
	13.	"		411 30
	14.	"		384 15
	15.	"		383 85
	16.	"		361 50
	18.	"		1,591 15
	19.	"		479 15
	20.	By cash		416 00
	21.	"		392 95
	22.	"		378 80
	23.	"		376 20
	25.	"		1,425 30
	26.	"		488 75
	27.	"		388 70
	28.	"		341 65
	29.	"		384 15
	30.	"		364 85
July	2.	"		1,407 05
	3.	"		440 75
	5.	"		1,339 70
	6.	"		451 85
	7.	"		407 60
	9.	"		998 20
	10.	"		20,443 80
	11.	"		497 40
	12.	"		387 90
	13.	"		361 70
	14.	"		389 85
	16.	"		1,399 15
	17.	"		459 60
	18.	"		416 30
	20.	"		672 90
	21.	"		319
	23.	"		1,189 35
	24.	"		422 20
	25.	"		367 45
	26.	"		399 80
	27.	"		338 15
	28.	"		317
	30.	"		994 25
	31.	"		430 05
Aug.	1.	"		347 90
	2.	"		385 20
	3.	"		278 85
	4.	"		541 20
	6.	"		1,418 35
	7.	"		357 05
	8.	"		513 80
	9.	"		323 50
	10.	"		311 70
	11.	"		310 85

	15.	"		314	85		
	17.	"		1,434	33		
	18.	"		780			
	20.	"		500			
	21.	"		100			
	22.	"		200			
	23.	"		100			
	24.	"		144			
	"	"		1,233	92		
	27.	"		716	77		
	29.	"		242	30		
	31.	"		179	45		
Sept.	1.	"		1,692	91		
	3.	"		2,442	03		
	5.	"		100			
	6.	"		8,884	74		
	7.	"		2,304	66		
	8.	"		646	35		
	10.	"		2,600			
	11.	"		100			
967	13.	"		200			
	14.	"		1,513	65		
	"	"		50			
	15.	"		20,268	18		
	17.	"		672	67		
	18.	"		2,052	02		
	"	"		192	50		
	19.	"		94	50		
		Balance		5,253	87		
				190,180	45		
Sept.	20.	To check		378		Sept. 19. By balance	5,253 87
	21.	"		52	56	20. " cash	286 40
	22.	"		1,360	60	21. "	269 80
	24.	"		259	60	22. "	262 50
	26.	"		293	78	24. "	847 95
	27.	"		80	20	25. "	325 15
	29.	"		1,809	65	26. "	246 15
Oct.	1.	"		189	00	27. "	271 75
	2.	"		2,914	07	28. "	273 50
	3.	"		6,826	87	29. "	255 25
	4.	"		950	70	Oct. 1. "	995 10
	5.	"		292	88	2. "	436 40
	6.	"		1,652	42	3. "	593 45
	"	"		191	25	4. "	386 10
	8.	"		1,548	17	5. "	409 80
	10.	"		265	77	6. "	283
	11.	"		300		8. "	1,057 05
	13.	"		1,321	70	9. "	305
968	15.	"		273	60	10. "	302 55
	16.	"		91	25	11. "	268 90
	"	"		1,181		12. "	280 25
	18.	"		100		13. "	252 35
	20.	"		715	75	15. "	996 85
	22.	"		1,827	25	16. "	310 85
	23.	"		525		17. "	306 45
	"	"		100		18. "	265 80
	24.	"		467	40	19. "	240 15
		Balance		31,896	65	20. "	234 55
						22. "	876 20
						23. "	292 05
						" "	40,000
						24. "	256 30
						25. "	223 55
				57,865	02		57,865 02
Oct.	26.	To check		86	40	Oct. 25. By balance	31,896 65
	27.	"		342	40	26. " cash	215 25
	"	"		2,626	05	27. "	199 75
	29.	"		7,952	67	29. "	687 90
	31.	"		83	25	30. "	1,066 65
Nov.	1.	"		861	66	31. "	230 10
	"	"		610	80	Nov. 1. "	212 80
	2.	"		4,195	43	2. "	299 65
	"	"		5,312	45	3. "	230 25
	3.	"		2,448	16	5. "	1,145 80
	"	"		500		6. "	449
	5.	"		2,571	47	7. "	229 65
	"	"		2,000		8. "	354 25
	6.	"		383		9. "	207 30

	7.	"		208	33
869	8.	"		273	94
	9.	"		100	
	"	"		94	50
	10.	"		631	40
	"	"		1,018	75
	"	"		579	85
	12.	"		900	
	13.	"		628	60
	14.	"		3,422	15
	"	"		262	25
	16.	"		3,421	25
	17.	"		738	56
	19.	"		1,563	55
	"	"		2,000	
	22.	"		100	
	"	"		145	25
	23.	"		679	91
	24.	"		2,344	76
	26.	"		218	75
	27.	"		51	
	"	"		725	50
	28.	"		4,600	00
	30.	"		2,359	
	"	"		1,200	
	Dec. 1.	"		1,877	84
	3.	"		1,413	75
	4.	"		8,103	28
	"	"		202	
	5.	"		285	30
	6.	"		275	
	7.	"		1,586	86
870	"	"		75	56
	8.	"		1,444	70
	"	"		347	75
	10.	"		2,024	94
	11.	"		7,293	66
	12.	"		385	97
	"	"		438	83
	13.	"		51	50
	"	"		1,200	
	14.	"		354	00
	"	"		1,347	20
	15.	"		100	
	17.	"		979	85
	"	"		200	
	18.	"		160	
	"	"		194	75
	19.	"		200	
	20.	"		152	95
	21.	"		283	50
	22.	"		1,725	72
	"	"		2,261	05
	24.	"		268	07
	"	"		311	50
	28.	"		2,839	66
	"	"		1,164	84
	31.	"		336	
	"	"		57	
				98,169	25

	10.	"		251	25
	12.	"		684	45
	13.	"		324	90
	14.	"		246	45
	15.	"		515	66
	16.	"		197	95
	17.	"		206	90
	19.	"		676	95
	21.	"		452	10
	22.	"		206	60
	23.	"		181	45
	24.	"		192	05
	27.	"		841	45
	28.	"		187	85
	30.	"		383	17
	Dec. 1.	"		167	40
	3.	"		816	55
	4.	"		395	85
	5.	"		3,998	29
	6.	"		356	50
	8.	"		1,642	10
	10.	"		1,065	70
	11.	"		410	
	12.	"		316	50
	13.	"		152	
	14.	"		214	
	15.	"		335	
	17.	"		557	
	18.	"		142	
	19.	"		1,540	25
	20.	"		112	
	21.	"		1,777	
	22.	"		217	
	24.	"		831	50
	26.	"		477	
	27.	"		221	
	28.	"		3,468	10
	29.	"		85	
	31.	"		576	
	"Balance to ldg. No. 3"			35,719	36
				98,169	25

1867.					
Jan'y 1.	To balance from ldg. No. 2			35,719	36
	2. To check			100	
	3.	3 "		2,018	47
271	4.	2 "		254	08
	5.	2 "		7,830	07
	"	1 "		218	50
	7.	2 "		1,463	75
	"	1 "		3,040	75
	9.	1 "		5,307	33
	"	1 "		344	63
	10.	1 "		93	40
	11.	2 "		396	65
	12.	1 "		276	97
	"	3 "		976	20
	14.	3 "		2,023	80
	"	1 "		217	
	16.	1 "		8,666	66
	"	1 "		100	
	18.	1 "		100	
	19.	4 "		2,577	34
	"	1 "		200	
	21.	1 "		100	
	"	1 "		126	60
	22.	1 "		479	

1867.					
Jan'y 2.	By cash			2,871	98
	3.	"		92	
	4.	"		138	
	5.	"		255	09
	7.			729	
	9.			2,158	
	10.			93	65
	11.			396	
	12.			140	
	14.			737	
	15.			373	
	16.			1,437	
	17.			297	
	18.			266	
	19.			256	
	21.			596	
	22.			238	
	23.			1,813	
	24.			239	
	26.			357	25
	28.			505	
	29.			191	
	30.			1,244	
	31.			145	

	15.	"		314 85
	17.	"		1,434 33
	18.	"		780
	20.	"		500
	21.	"		100
	22.	"		200
	23.	"		100
	24.	"		144
	"	"		1,233 92
	27.	"		716 77
	29.	"		2,2 30
	31.	"		179 45
Sept.	1.	"		1,692 91
	3.	"		2,442 03
	5.	"		100
	6.	"		8,884 74
	7.	"		2,304 66
	8.	"		646 35
	10.	"		2,600
	11.	"		100
267	13.	"		200
	14.	"		1,513 65
	"	"		50
	15.	"		20,268 18
	17.	"		672 67
	18.	"		3,052 02
	"	"		192 50
	19.	"		94 50
		Balance		5,253 87
				190,180 45

	13.	"		1,016 75
	14.	"		342 60
	15.	"		294 20
	16.	"		288 25
	17.	"		271 65
	18.	"		231 35
	20.	"		893 95
	21.	"		346 15
	22.	"		257 60
	23.	"		279 65
	24.	"		259 70
	25.	"		236 95
	27.	"		1,009 30
	28.	"		300 85
	29.	"		269 85
	30.	"		252 15
	31.	"		239 05
Sept.	1.	"		268 45
	3.	"		1,088 25
	5.	"		917 40
	6.	"		346
	7.	"		297 25
	8.	"		251 65
	10.	"		662 65
	11.	"		392 85
	12.	"		283 45
	13.	"		251 30
	14.	"		259 80
	15.	"		40,263 70
	17.	"		976 35
	18.	"		339
	19.	"		295 40
				190,180 45

Sept.	20.	To check		378
	21.	"		52 56
4	22.	"		1,360 60
	24.	"		259 60
	26.	"		293 78
	27.	"		80 20
	29.	"		1,809 65
Oct.	1.	"		189 00
	2.	"		2,914 07
	3.	"		6,826 87
	4.	"		950 70
	5.	"		292 88
	6.	"		1,652 42
	"	"		191 25
	8.	"		1,548 17
	10.	"		265 77
	11.	"		300
	13.	"		1,321 70
268	15.	"		273 60
	16.	"		91 25
	"	"		1,181
	18.	"		100
	20.	"		715 75
	22.	"		1,827 25
	23.	"		525
	"	"		100
	24.	"		467 40
		Balance		31,896 65
				57,865 02

Sept.	19.	By balance		5,253 87
	20.	" cash		286 40
	21.	"		269 80
	22.	"		262 50
	24.	"		847 95
	25.	"		325 15
	26.	"		246 15
	27.	"		271 75
	28.	"		273 50
	29.	"		255 25
Oct.	1.	"		995 10
	2.	"		436 40
	3.	"		593 45
	4.	"		386 10
	5.	"		409 80
	6.	"		283
	8.	"		1,057 05
	9.	"		305
	10.	"		302 55
	11.	"		268 90
	12.	"		280 25
	13.	"		252 35
	15.	"		996 85
	16.	"		310 85
	17.	"		306 45
	18.	"		265 80
	19.	"		240 15
	20.	"		234 55
	22.	"		876 20
	23.	"		292 05
	"	"		40,000
	24.	"		256 30
	25.	"		223 55
				57,865 02

Oct.	26.	To check		86 40
	27.	"		342 40
	"	"		2,626 05
	29.	"		7,952 67
	31.	"		83 25
Nov.	1.	"		861 66
	"	"		610 80
	2.	"		4,195 43
	"	"		5,312 45
	3.	"		2,448 16
	"	"		500
	5.	"		2,571 47
	"	"		2,000
	6.	"		383

Oct.	25.	By balance		31,896 65
	26.	" cash		215 25
	27.	"		199 75
	29.	"		687 90
	30.	"		1,066 65
	31.	"		230 10
Nov.	1.	"		212 80
	2.	"		299 65
	3.	"		230 25
	5.	"		1,145 80
	6.	"		449
	7.	"		220 65
	8.	"		354 25
	9.	"		207 30

	7.	"		208	33
269	8.	"		273	94
	9.	"		100	
	"	"		94	50
	10.	"		631	40
	"	"		1,018	75
	"	"		579	85
	12.	"		900	
	13.	"		628	60
	14.	"		3,422	15
	"	"		262	25
	16.	"		3,421	25
	17.	"		738	56
	19.	"		1,563	55
	"	"		2,000	
	22.	"		100	
	"	"		145	25
	23.	"		679	91
	24.	"		2,344	76
	26.	"		218	75
	27.	"		51	
	"	"		725	50
	28.	"		4,600	00
	30.	"		2,359	
	"	"		1,200	
Dec.	1.	"		1,877	84
	3.	"		1,413	75
	4.	"		8,103	28
	"	"		202	
	5.	"		285	30
	6.	"		275	
	7.	"		1,586	86
270	"	"		75	56
	8.	"		1,444	70
	"	"		347	75
	10.	"		2,024	94
	11.	"		7,293	66
	12.	"		385	97
	"	"		438	83
	13.	"		51	50
	"	"		1,200	
	14.	"		354	00
	"	"		1,347	20
	15.	"		100	
	17.	"		979	85
	"	"		200	
	18.	"		160	
	"	"		194	75
	19.	"		200	
	20.	"		152	95
	21.	"		283	50
	22.	"		1,725	72
	"	"		2,261	05
	24.	"		268	07
	"	"		311	50
	28.	"		2,839	66
	"	"		1,164	84
	31.	"		338	
	"	"		57	
				98,169	25

	10.	"		251	25
	12.	"		684	45
	13.	"		324	90
	14.	"		246	45
	15.	"		515	66
	16.	"		197	95
	17.	"		206	90
	19.	"		676	95
	21.	"		452	10
	22.	"		906	60
	23.	"		181	45
	24.	"		192	65
	27.	"		841	45
	28.	"		187	85
	30.	"		383	17
Dec.	1.	"		167	40
	3.	"		816	55
	4.	"		395	85
	5.	"		3,998	29
	6.	"		356	50
	8.	"		1,642	10
	10.	"		1,065	70
	11.	"		410	
	12.	"		316	50
	13.	"		152	
	14.	"		214	
	15.	"		335	
	17.	"		557	
	18.	"		142	
	19.	"		1,540	25
	20.	"		112	
	21.	"		1,777	
	22.	"		217	
	24.	"		831	50
	26.	"		477	
	27.	"		221	
	28.	"		3,468	10
	29.	"		85	
	31.	"		576	
"Balance to ldg. No. 3"				35,719	36
				98,169	25

1867.							
Jan'y	1.	To balance from ldg. No. 2..			35,719	36
	2.	To check			100		
	3.	3	"		2,018	47
271	4.	2	"		254	08
	5.	2	"		7,830	07
	"	1	"		218	50
	7.	2	"		1,463	75
	"	1	"		3,040	75
	9.	1	"		5,307	33
	"	1	"		344	63
	10.	1	"		93	40
	11.	2	"		396	65
	12.	1	"		276	97
	"	3	"		976	20
	14.	3	"		2,023	80
	"	1	"		217	
	16.	1	"		8,666	66
	"	1	"		100	
	18.	1	"		100	
	19.	4	"		2,577	34
	"	1	"		200	
	21.	1	"		100	
	"	1	"		196	60
	22.	1	"		479	

1867.					
Jan'y	2.	By cash		2,871	98
	3.	"		92	
	4.	"		138	
	5.	"		255	00
	7.			729	
	9.			2,158	
	10.			93	65
	11.			396	
	12.			140	
	14.			737	
	15.			373	
	16.			1,437	
	17.			297	
	18.			966	
	19.			256	
	21.			596	
	22.			238	
	23.			1,813	
	24.			239	
	26.			357	25
	28.			505	
	29.			191	
	30.			1,244	
	31.			145	

	23.	1	"		500
	24.	1	"		100
	"	1	"		189
	25.	1	"		1,101 95
	26.	4	"		627 50
	31.	2	"		2,817 06
	"	1	"		78 10
	Feb'y 1.	2	"		861 25
	"	2	"		1,471 66
	2.	5	"		8,741 43
	5.	1	"		1,732 74
272	6.	To 1 check			330 43
	7.	1	"		600
	"	1	"		1,433 09
	8.	3	"		4,254 58
					97,469 35

	Feb'y 8.	To balance			77,177 79
	9.	To 1 check			135
	11.	6	"		12,528 17
	"	3	"		4,156
	12.	1	"		89
	13.	2	"		780 15
	15.	2	"		751 21
	"	1	"		108 64
	16.	3	"		1,872 94
	18.	2	"		985 12
	"	1	"		531 33
	19.	2	"		2,343 01
	20.	5	"		1,544 20
	23.	1	"		200
	"	1	"		864 50
	25.	2	"		5,574 17
	27.	1	"		306 25
	28.	1	"		203 33
	"	1	"		3,073 04
	M'c'h 1.	2	"		1,057 80
	2.	3	"		909 13
	"	2	"		1,677 81
	4.	5	"		6,036 15
	"	1	"		1,110
	5.	1	"		7,497 95
	6.	1	"		300
273	7.	To 1 check			203 60
	8.	1	"		370
	"	2	"		294 03
	9.	2	"		443 62
	"	1	"		353
	11.	3	"		5,677 86
	12.	1	"		3,433 50
	"	1	"		2,849 53
	13.	1	"		287 66
	16.	1	"		1,290
	"	1	"		1,276 50
	18.	1	"		418 31
	"	1	"		400
	19.	1	"		208 33
	21.	1	"		1,835
	22.	1	"		1,791 66
	"	1	"		888 92
	23.	5	"		1,571 70
	25.	1	"		7,861 26
	28.	2	"		2,855 50
	29.	2	"		907 62
	30.	3	"		3,082 65
	Ap'l 1.	2	"		1,648
	"	1	"		300
	2.	1	"		971 66
	3.	1	"		89 05
	"	1	"		225
	5.	4	"		1,674 49
	"	1	"		524 10
					174,850 24

274	April 5.	To balance			14,488 99
	6.	" 3 checks			780 30
	8.	" 1			4,243 20
	9.	" 3			8,008 37
	"	" 1			831 50
	10.	" 1			3,493 89
	11.	" 3			4,430 55
	"	" 1			266 75
	12.	" 1			748 35
	13.	" 2			1,408 33

	Feb'y 1.				1,242 20
	4.				797
	5.				294
	7.				2,108
	8.				282 50
		To balance			77,177 79
					97,469 35

	Feb'y 11.	By cash			1,937
	12.	"			335
	13.	"			192
	14.	"			236
	15.	"			298
	18.	"			799
	19.	"			382
	20.	"			2,144 70
	23.	"			781
	25.	"			571
	26.	"			314
	27.				198
	28.				5,287 75
	M'c'h 1.				2,597 56
	2.				176
	4.				2,588 81
	5.				434
	6.				1,418
	7.				308
	8.				297 03
	9.				214
	11.				1,230
	12.				388 50
	13.				1,748 66
	14.				366
	16.				135
	18.	"			1,929
	19.	"			142
	"	"			425,000
	21.	"			598
	22.	"			303
	23.	"			336
	25.	"			1,007
	26.	"			2,252
	27.	"			194
	28.	"			942
	29.	"			329
	30.	"			268
	April 1.	"			1,520 25
	2.	"			535
	3.	"			279
	4.	"			250
		Balance			14,488 99
					174,850 24

	April 6.	By cash			780 30
	8.				630
	9.				2,614 90
	10.				1,325
	11.				370
	12.				489
	13.				353
	15.				651
	16.				1,635 50
	17.				244

16.	1	"	1,431 29	18.			217
17.	2	"	749 50	20.			500
"	1	"	780 79	23.			2,337 30
20.	1	"	1,224 57	24.			540
"	1	"	635 85	25.			633 35
22.	3	"	1,093 25		To balance		72,008 89
23.	3	"	775				
25.	2	"	3,466				
26.	1	"	424 15				
27.	1	"	446 25				
29.	4	"	6,741 99				
May 2.	2	"	3,621 99				
3.	2	"	916 66				
4.	2	"	2,972				
6.	3	"	7,249 80				
7.	1	"	405 17				
8.	2	"	4,500				
10.	2	"	7,434 75				
11.	1	"	1,766				
			85,329 24				85,329 24
May 11, To balance			72,008 89				

275 NEW ORLEANS, LA., *March 12th*, 1869.

I hereby certify that the foregoing account of "G. T. Beauregard, lessee," is a correct transcript from the individual ledgers Nos. 2 & 3, A to M, of the First National Bank of New Orleans.

(Signed) C. CASE, *Receiver.*

Order on rule.—Extract from the minutes of Saturday, March 6th, 1869

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & al. } No. 5359.

The rule taken on Thos. P. May was called—H. C. Miller, J. A. Campbell, and C. Dufour for defendants, Elmore & King for plaintiff, Wm. H. Hunt for T. P. May—when, after hearing argument for rea-
276 sons orally assigned, ordered that T. P. May do answer each and every question propounded to him except the 10th.

Notice to take testimony.—Issued April 3d, 1869.

United States circuit court, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & al. } No. 5359.

To Elmore & King, esq's:

You are hereby notified that testimony will be taken in the above entitled cause on Tuesday, the 6th day of April, 1869, at the clerk's office of this court, before D. Urban, U. S. commissioner, at 10 o'clock a. m., on behalf of defendants.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

New Orleans, April 3d, 1869.

277 *Marshal's return.*

Received, April 3d, 1869, by the U. S. marshal, and left on desk of W.

W. King, at office, corner Natchez and Magazine streets, on April 3d, 1869.

New Orleans, April 3d, 1869.

(Signed) S. W. REED, *D'y U. S. Marshal.*

Testimony.—Filed April 6th, 1869.

U. S. circuit court.

FOURTH NATIONAL BANK OF NEW YORK *vs.* NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

Testimony in above cause, and on behalf of defendants, taken before D. Urban, U. S. commissioner.

Present, W. W. King, of Elmore & King, of counsel for complainant; present, Henry C. Miller and L. E. Simonds, of counsel for defendants; absent, P. H. Morgan, U. S. attorney.

278 Thomas P May, being duly sworn, says:

At the time of my transfer of the lease of the Carrollton Railroad Company to the United States of America, by act, before Hero, of May 16th, 1867, I had a power of attorney from A. C. Graham, authorizing me to make said transfer for him, and also to convey the property. The power of attorney, to which I refer to, is the same as that referred to in the act of assignment. It was understood between myself and Mr. Graham that the whole property referred to in that assignment was my own property, and that I was to deal with it as I pleased.

(Counsel for complainant objects to the above testimony on the ground that it is seeking to establish title to real estate by parol proof; 2dly, to contradict and vary written acts in reference to property in controversy.)

279 At the time of making this assignment, I had no notice of any assignment made by A. C. Graham to the Fourth National Bank of New York. I do not recollect the precise amount furnished under the act of copartnership between Beauregard, May, and Graham, under date 18th April, 1866, to carry out the lease of the Carrollton railroad as stated in said act. But whatever amount was to be furnished by May and Graham was actually furnished by me, but not all in my name. But they were all my own means that were furnished. I can't recollect the precise amount furnished, but it was about three hundred thousand dollars that was to be furnished. And the amount actually furnished, I think, was in the vicinity of that sum. The amount was all fur-

280 nished between 18th April, 1866, and 12th April, 1867. Perhaps there may have been some small amounts furnished before the 18th April, 1866, but I do not remember. These sums were furnished to General Beauregard, who himself applied them to the purposes of the road. During a portion of the summer of 1866 I acted under his power of attorney in attending to the business of the road. General Beauregard had the full control and direction of the road. My conferences and transactions in regard to the road were with Beauregard and no one else. From the 18th April, 1866, to 16th May, 1867, I recognized on one but Beauregard as the party interested with me in the Carrollton railroad.

All objections being reserved to the foregoing testimony, counsel for complainant proceeds to cross-examine:

281 Question. Before entering into a copartnership for the lease of the Carrollton railroad with Beauregard and Graham, had you not made a previous contract of copartnership with Beauregard alone?

Answer. Yes.

Question. Have you a copy of that contract?

Answer. I have not. I think it was a notarial act.

Question. Before what notary?

Answer. Before Magner, of Gottschalk; or it may have been before Ducatel.

Question. How long was this contract entered into before the final one between yourself, Beauregard, and Graham?

Answer. I think it was within a month; am not positive; but it was not long.

Question. Why was that contract set aside and a new one made, taking Graham in as a partner?

Answer. I conceived at the time that it would give me more control of the road or of the property.

282 Question. Did you communicate that reason to General Beauregard?

Answer. No; I don't think I did.

Question. What was the reason you assigned to Beauregard for changing the partnership?

Answer. At this date I cannot recollect the precise reasons which were assigned in a conversation between myself and Beauregard about changing the partnership; but the subject was much discussed to admit a third party, and I think the suggestion came from Beauregard himself.

Question. Do you recollect what amount you were to furnish to Beauregard to carry out the contract under the first contract?

Answer. I do not remember.

Question. Was it more or less than what you were to furnish under the second contract?

283 Answer. I do not remember; the contract existed for so short a time that it has escaped my memory.

Question. Did you not assign as a reason for taking Graham into the concern was, that the amount of money required, as stipulated in the second contract, was more than what you were willing to embark in the business, or something to that effect?

Answer. I do not remember of any reason being assigned for taking in a third party. I do not state that there was not any reason.

Question. What time did Mr. Graham leave New Orleans to settle in New York?

Answer. I think it was in the latter part of the summer of 1866.

Question. Had he been president of the 1st National Bank of New Orleans before he went north?

Answer. He was, and remained for some time after.

284 Question. Has he ever visited New Orleans since that time?

Answer. Not to my knowledge.

Question. You have stated in your examination-in chief that Beauregard had full control in carrying on the lease. Please state if all of the expenditures made by the partnership were not paid out by him.

Answer. Yes, except during the period when he was absent, and I was acting as his attorney.

Question. Were not all the funds used in the business deposited in bank to the credit of Beauregard?

Answer. They were deposited in bank in the name of Beauregard, as lessee.

Question. In what bank were they so deposited?

Answer. As far as my knowledge extends they were deposited in the 1st National Bank.

Question. Were they not deposited to the credit of Beauregard,
285 as lessee, to indicate that they were the funds to carry out their business connected with the lease?

Answer. Yes.

Question. Were those funds so used?

Answer. To the best of my knowledge and belief, yes.

Question. When were you first elected president of the 1st National Bank?

Answer. I do not remember when. I was president pro tem., during Mr. Graham's absence north, and when he sent on his resignation, I was elected president.

Question. Do you recollect how the account of Beauregard, as lessee, stands on the books of the bank. Does he stand as a debtor or creditor?

Answer. I do not know. I was not president of the bank at the time of its suspension.

Question. Who was president at that time?

Answer. Mr. Forbes.

286 Question. How long had Mr. Forbes been your successor before the suspension.

Answer. Several months.

Question. You have stated in your examination-in-chief that you furnished all the money for carrying out the copartnership that was to be furnished by yourself and Mr. Graham. If you did this, why was Mr. Graham and Beauregard, as lessee, charged on the books of the bank as debtors for a large portion of that amount?

Answer. I don't know. I don't know if they were so charged.

Question. If such charges are made on the books of the bank, was not the money furnished by you, as president of the bank?

Answer. I think not.

Question. If the bank did not furnish the money, why should it have been charged on the books of the bank as having been furnished by it?

287 Answer. I don't know. I had very little to do with the books of the bank; they were managed by Mr. Forbes, the vice-president, a portion of the time, but afterwards president of the bank.

Question. Who was your general book-keeper at the time these charges were made?

Answer. I do not know if these charges were made whilst I was president. Mr. L'hoste was book-keeper while I was president; he was the general book-keeper.

(Counsel for the defendants object to all the foregoing testimony, relating to the books of the bank, and the charges supposed to be therein contained, upon the ground that the books themselves are the best evidence.)

Re-direct:

I have no personal knowledge of the charges upon the books of the bank, or of any special account.

(Signed) T. P. MAY.

288 Sworn to and subscribed before me this 11th March, 1869.

(Signed) D. URBAN, *U. S. Comm'r.*

Further examination of witnesses postponed until March 25th, 1869.

MARCH 25TH, 1869.

Examination resumed.

Present, W. W. King, of Elmore & King, of counsel for complainants; present, H. C. Miller and C. Dufour, of counsel for defendants; absent, P. H. Morgan, U. S. att'y:

G. T. Beauregard, being duly sworn, says:

I was the lessee of the Carrollton railroad in 1866. The lease originally was in my name, with an understanding with Mr. T. P. May, that he was to come in as a partner; he came in as part owner; it was understood between May and myself, that May was to furnish the means.

289 A few days after this, Mr. May said he desired to bring a friend of his in, meaning Mr. A. C. Graham. After the act of association between May, Graham, and myself, I had the management and control of the road. I had nothing to do with the furnishing of the funds. Mr. Graham never paid to me any money for the purposes of the road, personally. The money was furnished, but I do not know by whom of the two. I never called on Mr. Graham for any money for this road; my transactions were altogether with Mr. May. I conferred with Mr. May upon the subject of the management of the road, although I was not called upon to do so. I furnished each one with a monthly statement of the expenditures and receipts of the road, as copartners. I mean that the order to furnish these statements was at

290 the office of the road; the order I speak of was given at the commencement of the enterprise. I had knowledge of an act of the legislature, passed on 9th March, 1867; it was passed through with my exertions, and I conferred with Mr. May in reference to the passage of the act. I did not confer with Mr. Graham in regard to it; my impression is, that he was not here.

I am not now operating under the lease originally granted, to which I referred. Since the date of the act of fusion in April, 1867, the road has been conducted under the act of fusion. Mr. A. C. Graham did not take, or offer to take, any part in reference to the act of fusion of which I speak, to my knowledge.

The Fourth National Bank did not claim any interest of me, personally, as the representative of the road, at any time, that I am aware of, except so far as this suit is concerned. When I speak of being

291 aided in the fusion by the lessees, I speak of Binder, Bonneval, and Hernandez, the intended purchasers of the interest of the government in the road. I always went to May and conferred with May, but I recognized both as parties in the lease; in so recognizing them, I was governed by the contract.

Cross-examined:

Question. You say before the contract of lease to yourself, May, and Graham was made, there had existed, for a few days, a previous contract of lease to yourself and May alone; have you a copy of that contract?

Answer. Not that I am aware of.

Question. Being now shown document marked O O, and asked if he recognizes that as a copy of the agreement between them—

Answer. Yes; which is the agreement referred to in my examination-in-chief. This agreement was superceeded by the notarial

292 act of partnership between May, Graham, and myself.

Question. Please state what is the amount Mr. May was to furnish by that agreement.

Answer. By the agreement of March 11th, 1866, it was $150,000 00.

Question. What was the amount to be furnished under the agreement between yourself, May and Graham?

Answer. $300,000 00, as per contract of April 18th, 1866.

Question. What was the reason assigned to you by Mr. May for wishing to take Mr. Graham into the partnership? Was it not because Mr. May was unwilling to furnish the $300,000 00 that was then thought to be necessary?

Answer. I have no recollection that he stated that it was because he was unwilling to furnish that amount; but I recollect that he said
293 that it was to aid and assist him in furnishing the amounts required; how that was to be done, he did not in the least intimate.

Question. Where did you deposit the funds that were raised to carry on your contracts under the lease?

Answer. In the First National Bank, in the city of New Orleans.

Question. Was that bank the only place you deposited funds in carrying on the business?

Answer. It was.

Question. Did you use all of the funds deposited in that bank to your credit, in carrying on the business?

Answer. I did. There was also some real estate purchased for the partnership in connection with said business.

Question. How were the funds deposited in bank to your credit? How was the account kept?

Answer. In my name as lessee—that meant, as lessee of the railroad.

294 Question. In purchasing real estate, in whose name was the title taken?

Answer. The four acts herewith filed show better than my memory the name in which the property was purchased. Some was in my name and some was in the name of the firm. All property mentioned in these four acts were purchased for the partnership, and are referred to in my testimony of December 30th, 1868. (Said acts are marked respectively P P, Q Q, R R, S S.)

Question. What was the amount furnished you in carrying on the business?

Answer. I do not recollect. The books of the office will show.

Question. Did Mr. May have a power of attorney at one time, to represent you while you were absent? If so, state when you were absent, and how long you were absent.

295 Answer. He had. I was absent about 5 months, from the beginning of May until about middle of October, 1866.

Question. Have you a copy of that power of attorney?

Answer. The power of attorney is at Amedee Ducatel, notary.

Question. Was he authorized, by that power of attorney, to check out funds deposited to the credit of Beauregard, lessee, in the 1st National Bank, in the city of New Orleans.

Answer. He was.

Question. Was he authorized to draw notes in your name to raise money on?

Answer. He was, but understood, of course, not until they had complied with furnishing the $300,000 00 as per contract.

Question. Did Mr. May use your name, and have you or not repudiated the transactions?

Answer. He did, and I have denied the liability.

296 Question. Did he not so sign one single note for $40,000 00?

Answer. Yes.

Question. Was not that sum placed to your credit as lessee?

Answer. I cannot recollect whether it was deposited to my credit or not, but that amount was expended in the business of the road. This transaction took place during my absence in Europe.

Question. Do you know how your account, as lessee, now stands in the First National Bank, in city of New Orleans?

Answer. I do not; a reference to the books will show. I attended entirely to the out-door business, and he to the monetary.

Re-direct:

I regarded the $40,000 00 as furnished to the concern under the contract.

(Signed) G. T. BEAUREGARD.

Sworn to and subscribed before me this 25th March, 1869.

(Signed) D. URBAN, *U. S. Comm'r.*

297 U. S. circuit court.

FOURTH NATIONAL BANK OF NEW YORK vs. NEW ORLEANS AND CARROLLTON RAILROAD Co. & al. } No. 5359.

Testimony on behalf of defendants taken before D. Urban, U. S. commissioner.

Present, H. C. Miller and L. E. Simonds, of counsel for defendants; present, King, of Elmore & King, of counsel for complainants.

Counsel for complainants object to testimony being taken on the ground that there is not sufficient time to take said testimony before the calling of this case for trial, it being now 25 minutes after ten, and case being fixed for 11 a. m.

T. P. May, being sworn, says:

298 Question. Have you any knowledge of a check dated May 4th, 1866, signed by A. C. Graham, for $20,000, payable to order of Beauregard, lessee, and another check dated May, 8th, 1866, purporting to be signed by A. C. Graham, per pro T. P. May, for $30,000, payable to cash or bearer, and another check, date June 9th, 1866, signed by A. C. Graham, per pro T. P. May, for $20,000, payable to Beauregard, lessee; and another check, dated July 10th, 1866, for $20,000, signed by A. C. Graham, to order of Beauregard, lessee, all drawn on 1st National Bank? If you have, state how they came to be drawn, out of whose funds the same were paid, and all you know connected therewith.

Answer. I cannot remember those identical checks, nor any special amounts. I can only claim that the interest which stood in Mr. Graham's name was mine, identified as the interest in the lease of the Car-

299 rollton railroad. Mr. Graham had means of mine in his hands in 1866, when it is claimed he made these payments on account of the lease. The understanding between Graham and myself was that the payments made by him on ac. of this lease should be paid out of my means in his hands. I remember drawing checks in Graham's name as his per pro. I have no doubt but that some of them were for the Carrollton railroad; if such checks were drawn they were paid with my

means; though during the absence of Mr. Graham at New York, I acted for him. He had a single bank ac. and some portions of that ac. were his own means. The bulk of Mr. Graham's bank ac. was my means. The reason why Mr. Graham was introduced in this lease, was because it gave me full control of the road in case of diffi-
300 culty with Beauregard or his heirs. I certainly did not apply $50,000 of Graham's real means in payments upon this road. I may have applied his nominal means; in fact, I applied more than that of his nominal means. I was intimate with Graham and knew his pecuniary condition thoroughly. His pecuniary condition, as far as I knew, was of a limited character; he simply had his salary as president of the bank. Accounts were rendered monthly of the condition of the road, to Beauregard, Graham, and myself. I think I have those accounts; I don't remember specially any particular ac. amongst them. I identify the power of attorney now produced, marked "A 9," as the power from Graham to myself.

Cross-examined:

Question. Mr. May, did or did not Mr. Graham have a deposit ac. with 1st National Bank?

Answer. To the best of my knowledge and belief, he had.

301 Question. Were not all the checks drawn by him, or you for him, under power of attorney, charged up against him in that deposit ac.?

Answer. I presume, of course, they must have been charged up against him.

Question. Who settled the balance of Mr. Graham with the bank on that deposit ac.? Did you settle it, or did Mr. Graham settle it?

Answer. I don't remember; I don't know if it was ever settled.

Question. What was the balance against Beauregard, as lessee, on his deposit ac. with the bank? State it as nearly as you can.

Answer. At this time I have not the faintest idea of it.

Question. Can you come within an $100,000 of it?

Answer. I cannot.

302 Question. Were not the deposit accounts of both Beauregard and Graham frequently balanced?

Answer. I presume they were balanced, as is usually done; commercial ac.'s are balanced every month.

Question. Are not these balances usually carried into the depositor's bank-book.

Answer. Yes.

Question. Have you ever paid any part of the balance against Beauregard, as lessee, at the time the bank was closed?

Answer. I have paid nothing since the close of the bank, and, as far as I know, a balance stands against Beauregard, as lessee.

Question. Do you not consider Graham as liable to the bank for his virile share of that balance?

Answer. At the present state of affairs I cannot answer; but, before the close of the bank, I should not have considered him liable, and before the time of my failure.

303 Question. Do you consider him now liable?

(Question and answer objected to as seeking an opinion.)

Answer. I have not considered the subject much, but I suppose he might be made now liable.

Question. How was it possible for Mr. Graham to be liable for that debt if he had no interest whatever in the railroad?

Answer. Just as I might be liable on an appeal bond for a friend, and because Graham had signed the articles of copartnership.

Re direct:

It was understood, between myself and Graham, that the object of taking him into the partnership, and giving him that power of attorney, was to give me a control of ⅔ interest in the road.

That power of attorney was not given specially for the railroad business, but that he had other business.

304 I was a director of the 1st National Bank during these transactions, and president a part of the time.

(It is agreed between counsel that the foregoing testimony is taken subject to all legal exceptions and objections.)

(Signed) T. P. MAY.

Sworn to and subscribed before me this 6th April, 1869.

(Signed) D. URBAN, *U. S. Comm'r.*

Document marked O O, produced by complainant, and filed with, and referred to, in the foregoing testimony of Beauregard.

NEW ORLEANS, LA., *March 11th*, 1866.

Copartnership for leasing the New Orleans and Carrollton railroad:

The copartnership shall consist of the following parties: G. T. Beauregard and T. P. May, both of New Orleans, La.

305 G. T. Beauregard shall obtain in his name the lease of the Carrollton railroad; he shall take charge, manage, and direct the undertaking, at a salary of five thousand dollars ($5,000) per annum, payable monthly, and said G. T. Beauregard shall have the right to select and appoint his assistants, with proper salaries. The amount of money necessary to carry out the enterprise, and which shall not exceed one hundred and fifty thousand dollars, ($150,000,) shall be furnished by T. P. May, who shall be reimbursed, capital and interest, @ 8% per annum, from the annual net profits of the enterprise, after which the future annual net profits shall be divided equally between the two said parties.

The said sum of one hundred and fifty thousand dollars, ($150,000,) to be furnished by said T. P. May, shall be paid to said G. T. Beauregard as follows:

306 Twenty thousand dollars ($20,000) immediately after the signing of the lease of the said road, then twenty thousand dollars ($20,000) per month during the next four succeeding months, then ten thousand dollars ($10,000) per month, (should they be required by the lessee,) to the end of said sum of one hundred and fifty thousand dollars, ($150,000,) agreed upon by said T. P. May to furnish to said G. T. Beauregard. On the 1st of each month, a statement of amounts received and expended during the preceding month, shall be furnished to said T. P. May, by said G. T. Beauregard, who will make his deposit in the First National Bank of Louisiana.

G. T. BEAUREGARD.
T. P. MAY.

Witnesses, (in duplicate:)
BENJAMIN FLORANCE.

Document marked P P.—Filed with, and referred to, in the foregoing testimony of G. T. Beauregard.

307 Reference is also made to this document as document Z², in the testimony of G. T. Beauregard, transcribed at page 199.

Sale of property by Sam'l Arthur Kohn to G. T. Beauregard, Th. P. May, A. C. Graham.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it remembered that on this the thirtieth day of the month of April, one thousand eight hundred and sixty-six, and the 90th year of the independence of the United States of America, before me, Amedee Ducatel, a notary public in and for the city and parish of New Orleans, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr.
308 Samuel Arthur Kohn, residing in this city, which said appearer declared that, for the consideration, and on the terms and conditions hereinafter expressed, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with all legal warranty, from this day, and forever, and with substitution and subrogation to all his rights and actions of warranty against all vendors or former proprietors, unto Messrs. Gustave Toutaut Beauregard, Thomas P. May, and Augustus C. Graham, residing in this city, here present and accepting, purchasing for themselves, their heirs, and assigns, in the proportion of one-third each, and acknowledging delivery and due possession thereof, a certain square of ground, with all rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, situated in the city of Jefferson, parish of Jefferson, in this State, designated
309 by the number sixty-six, on a lithographic plan deposited in the office of Adolphe Mazurean, notary in this city. The said square comprised between Nayades, Appollo, Milan, and Berlin streets, and containing twenty-four lots, numbered one to twenty-four, inclusive, being the same acquired by the said Samuel Arthur Kohn from the estate of Samuel Kohn, as per act executed before Adolphe Mazureau, notary, dated the twenty-sixth day of May, eighteen hundred and fifty-four, registered in the conveyance office of the parish of Jefferson, Book E, folio 224.

All the taxes on said lot or square of ground have been paid up to the year eighteen hundred and sixty-four inclusive, as appears from the receipts exhibited to me, notary undersigned. And the said vendor, Samuel Arthur Kohn, promises and binds himself to pay those
310 for the year now last past (1865) whenever required so to do. And by reference to the annexed certificate of the recorder of mortgages in and for the parish of Jefferson, it will appear that there is no mortgage whatsoever standing in the name of the present vendor, and recorded against said square of ground. The same certificate shows that the said square of ground is subject to the drainage tax.

To have and to hold the said square of ground unto the said Beauregard, May, and Graham, their heirs and assigns, *to their proper use and behoof forever. And the said Samuel Arthur Kohn for himself, his heirs, and assigns, to the said Beauregard, May, and Graham, their heirs and assigns, shall, and will warrant, and forever defend against the lawful claims of all persons whomsoever by these presents, and the said vendor does moreover subrogate the said purchasers

This reference approved.—D. Urban, Clerk.

to all the rights and actions of warranty which he has, or may have, against his own vendor, or against the vendors of his vendor, fully authorizing the said purchaser to exercise the said rights and actions in the same manner as he himself might or could have done. This sale is made and accepted for and in consideration of the total price and sum of eight thousand dollars, in deduction of which that of two thousand six hundred and sixty-six dollars sixty-six cents and two-thirds by the said purchasers has been in hand well and truly paid in ready current money, the receipts whereof is hereby acknowledged, and acquittance therefor granted by the said S. A. Kohn, vendor. And for the balance the said purchasers have furnished two promissory notes by them subscribed to the order of, and endorsed by themselves, dated this day, for the sum of two thousand six hundred and sixty-six dollars sixty-six cents and two-thirds each, bearing interest at the rate of eight per centum per annum from date until final payment, and payable respectively one and two years after date, which notes marked and signed ne varietur, by me, the notary undersigned, to be herewith identified, were handed over and delivered to the said vendor who acknowledges said delivery.

Now, in order to secure the full and punctual payment of said notes at maturity, together with the payment of all interest, costs, even lawyers' fees, at the rate of five per cent. on the amount of said notes in case of judiciary proceedings, the said purchasers do hereby affect, mortgage, and hypothecate specially the above square of ground, in favor of all bearers of the said notes, promising not to sell, alienate, mortgage, or incumber the said square of ground to the prejudice of the present act.

Thus done and passed in my office at the said city of New Orleans, in the presence of Messrs. Henry Ducatel and Andre Pelaune, witnesses of lawful age, and domiciliated in this city, who hereunto signed their names, together with the said parties and me, the said notary, after the reading of the act.

(Signed) G. T. BEAUREGARD.
A. C. GRAHAM.
T. P. MAY.
ARTHUR KOHN.
HENRY DUCATEL.
A. PELAUNE.
AMEDEE DUCATEL, *N. P.*

A true copy:
[SEAL.] (Signed) AMEDEE DUCATEL, *N. P.*

[5c. int. rev. stamp affixed and cancelled.]

Document marked Q Q.—Filed with and referred to in the foregoing testimony of G. T. Beauregard.

Reference is also made to this document in the testimony of Beauregard, transcribed at page 199 as document Z^3.

Sale of property.—New Orleans and Carrollton Railroad Company to G. T. Beauregard, lessee.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this twenty-ninth day of June, eighteen hundred and sixty-six, before me, Selim Magner, a notary public, duly

A true copy. New Orleans, 7th January, 1869.
[SEAL.] (Signed) S. MAGNER, *Not. Pub.*

[5c. int. rev. stamp affixed and cancelled.]

Document marked R R.—Filed with and referred to in the foregoing testimony of G. T. Beauregard.

Reference is also made to this document in the testimony of
323 G. T. Beauregard, transcribed at page 199 as document Z ⁴.

Sale of property.—New Orleans and Carrollton Railroad Company to G. T. Beauregard, lessee.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this fifteenth day of January, eighteen hundred and sixty-seven, before me, Selim Magner, a notary public in and for this city and the parish of Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared George Currie Duncan, esquire, of this city, herein acting in his quality of president of the New Orleans and Carrollton
324 Railroad Company, and moreover by virtue of a resolution of the directors of said company, adopted at their sitting of the sixteenth of November last, 1866, a certified copy whereof is annexed to an act of sale from said New Orleans and Carrollton Railroad Company to A. J. Fitzpatrick on the seventeenth December, 1866, passed before me, notary, who declared that for the consideration hereinafter set forth he does in his said quality by these presents grant, bargain, and sell with all legal warranties and with substitution and subrogation to all his rights and actions in warranty against all preceeding vendors or possessors, unto Gustave Toutaut Beauregard, esquire, of this city, purchasing as lessee of the New Orleans and Carrollton Railroad Company, here present, acknowledging possession and accepting for himself, his heirs, and assigns, seven certain lots of ground situate in the first
325 district of this city, in the square bounded by St. Charles, Felicity, Appollo or Carondelet, and Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven, on a plan deposited in my office as plan No. 116, according to which plan said lots measure as follows, to wit: Lot No. one measures thirty-six feet nine inches front on St. Charles street, by a depth of ninety-four feet between parallel lines. Lots two, three, four, and five, immediately in the rear of said lot No. one, adjoin each other and measure together about one hundred and thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch on the line nearest to St. Charles street and contiguous to the rear line of lot No. one, about eighty-two feet six inches on the side nearest to Appollo, now Carondelet, street, and about
326 one hundred and twenty-seven feet nine inches in the rear. And lots six and seven, adjoining each other and extending back to the rear line of lots fronting on Felicity street, measure each thirty-one feet eleven inches and five lines front on Polymnia street, by a depth of one hundred and twenty feet between parallel lines.

Together with all and singular the buildings and improvements thereon and appurtenances thereof, known as the "Horse Station," and all the

rights, ways, servitudes, privileges, and advantages thereunto belonging, or in any wise appertaining.

Which property forms part of certain real estate acquired by said company as follows, to wit: From P. Plique, f. m. c., per act before the late L. Hermann, notary, on the 18th of July, 1846; from James C. Parker, per act before W. Y. Lewis, late notary, on the 22d
327 March, 1836; from the sheriff of the parish of Orleans, per act before the late Theodore Tureaud, notary public, on the ninth of February, 1839; and from Pierre Michel, per act before Lucien Hermann, late notary public, on the sixteenth of March, 1847.

Said Duncan does hereby bind said company to pay the taxes due or to become due on said property for the year 1866 when collectable.

To have and to hold the said property unto the said purchaser, his heirs and assigns, to their only proper use and behoof forever. This sale is made for and in consideration of the price and sum of twenty-six thousand dollars, which the said Duncan, in his said quality, hereby acknowledges to have received in the manner following, to wit, eight thousand six hundred and sixty-six dollars sixty-six and $\frac{2}{3}$ cents in ready money, for which he grants acquittance and discharge, and for
328 the balance of said purchase price the said purchaser has furnished four several promissory notes to the order of and by Thomas P. May endorsed, dated seventeeth of December, eighteen hundred and sixty-six, each for the sum of four thousand three hundred and thirty-three dollars thirty-three and one-third cents, payable, two marked 1 & 2 in one year, and two marked 1 & 2 in two years, at the Canal Bank in this city, with interest thereon at the rate of eight per cent. per annum from date until final payment. Which notes have been duly paraphed ne varietur by me, notary, to identify the same herewith.

And in order to secure the payment of said promissory notes in capital, and all interest thereon as aforesaid, vendor's privilege and special mortgage in favor of said vendor, and the future holder or holders of said notes, is hereby retained on the property presently sold, the
329 said purchaser hereby binding himself and his heirs not to sell, alienate, or encumber the same to the prejudice of this act.

And the said purchaser furthermore binds himself to keep the buildings on said property constantly insured against the loss by fire to an amount not less than seventeen thousand five hundred dollars, and to transfer the policy of insurance to the said vendor until the full and final payment of the said notes, hereby consenting and agreeing that said vendor shall have the right to transfer such policy to any future holder or holders of the said notes, and that in case of failure on the part of the said purchaser to effect such insurance, the holder or holders of the said notes shall have the right to do so, and the reimbursement of all sums paid for that purpose shall be secured by the
330 mortgage herein granted; but this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury, which may result from the non-insurance of the said buildings.

By reference to the annexed certificate of the recorder of mortgages in and for this parish, it appears that said property stands encumbered in the name of said company.—

1st. By the draining privilege, of which said purchaser binds himself to pay the balance to become due thereon.

2d. By the mortgage granted by said company in favor of L. F. Generes, by act before me, notary, on the 29th January, 1857, to secure

one hundred and fifty thousand dollars of bonds, and interest thereon; which mortgage said Duncan binds himself to have cancelled without delay, so far as the presently sold property is concerned, and the
331 undersinged notary shall keep the proceeds of this sale until said property shall be clear of said mortgage.

The U. S. internal revenue stamps of twenty-six dollars are hereto attached.

Thus done and passed in my office at New Orleans aforesaid, on the day, month, and year first before written, in the presence of Edward G. Gottschalk and James Fahey, competent witnesses, residing in this city, who have hereunto signed their names with said parties and me, notary, after reading thereof.

(Signed) G. CURRIE DUNCAN, *Pres't.*
G. T. BEAUREGARD, *Lessee.*
E. G. GOTTSCHALK.
JAS. FAHEY.
S. MAGNER, *Not. Pub.*

A true copy.
New Orleans, 7th January, 1869.
[SEAL.] (Signed) S. MAGNER, *Not. Pub.*

[5c. int.rev. stamp affixed and cancelled.]

332 *Document marked S S.—Referred to and filed with the foregoing testimony of G. T. Beauregard.*

Reference is also made to this document in the testimony of Beauregard, transcribed at page 199, as document Z[1].

Sale of property by Wm. C. Raymond to G. T. Beauregard, Thos. P. May, and A. C. Graham.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this fifth day of May, in the year of our Lord one thousand eight hundred and sixty-six, and the 90th of the independence of the United States of America, before me, Amedee Ducatel, notary public in and for the city and parish of New Orleans, State
333 of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. William C. Raymond, residing in this city, who declared that for the consideration, and on the terms and conditions hereinafter expressed, he does, by these presents, grant, bargain, and sell, from this day and forever, under all lawful warranty, and with substitution and subrogation to all his rights and actions of warranty against all vendors or former proprietors, unto Messrs. Gustave Toutant Beauregard, Thomas P. May, and Augustus C. Graham, residing also in this city here present and accepting, purchasing for themselves, their heirs and assigns, in the proportion of one individual third each, and acknowledging delivery, and due possession thereof, a certain
334 square of ground, together with the improvements thereon, and all the rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situated in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades, and Appollo streets,

and containing twenty-four lots, numbered from one to twenty-four inclusive, in conformity with a lithographic plan deposited in the office of A. Mazureau, notary, in this city, being the same acquired by the said Wm. C. Raymond from Carl Kohn, as per act executed before N. Shannon, notary, in this city, dated the sixteenth day of May, eighteen hundred and sixty-two, and registered in the conveyances office of the parish of Jefferson, B. H, fo. 574, to have and to hold the said
335 square of ground unto the said purchasers, their heirs and assigns, for their only proper use and behoof forever.

From the receipts exhibited to me, notary, all the taxes on said square of ground have been paid up to the year eighteen hundred and sixty-five, inclusive.

This sale is made and accepted for and in consideration of the price and sum of twelve thousand five hundred dollars, in deduction of which that of four thousand one hundred and sixty-six dollars sixty-six cents and two-thirds by the said purchasers has been in hand well and truly paid in ready current money, the receipt whereof is hereby acknowledged, and acquittance therefor granted by the said Wm. C. Raymond, vendor. And for the balance the said purchasers have furnished two promissory notes, by them subscribed to the order of and en-
336 dorsed by themselves, dated this day, for the sum of four thousand one hundred and sixty-six dollars sixty-six cents and two-thirds each, bearing interest at the rate of eight per centum per annum from date until final payment, and payable, respectively, one and two years after date; which notes, marked and signed ne varietur by me, the notary undersigned to be herewith identified, were handed over and delivered to the said Wm. C. Raymond, who acknowledges said delivery.

Now, in order to secure the full and punctual payment of said notes at maturity, together with the payment of all interest and costs, even lawyers' fees, at the rate of five per cent. on the amount of said notes, in case of judiciary proceedings, the said purchasers do hereby affect, mortgage, and hypothecate specially the above square of ground in favor of all bearers of the said notes; promising and binding them-
337 selves not to sell, alienate, mortgage, or incumber the said square of ground to the prejudice of the present act.

By reference to the annexed certificate of the recorder of mortgages in and for the parish of Jefferson, it will appear that there is no mortgage whatsoever standing in the name of the present vendor, and recorded against square of ground, but that it is subject to the drainage tax.

The said vendor declares that he is tutor of two minor children, but that having furnished a special mortgage in their favor, by act before Thomas Layton, notary, in this city, dated the twenty-ninth day of March, eighteen hundred and fifty-three, there exist no generel and tacit mortgage against him.

And now personally appeared Mistress Mary Ann Laidlaw,
338 wife, of full age, of the said Wm. C. Raymond, who, after the undersigned notary had explained to her verbally the nature and purport of the foregoing act of sale from her said husband to the said Beauregard, May, and Graham, declared that she is desirous of releasing in favor of the said purchasers the square of ground hereinbefore sold, from the matrimonial, dotal, paraphernal, and other rights, and from all claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with the said Wm. C. Raymond, or otherwise.

Whereupon the undersigned notary did explain, verbally, to the said Mistress Raymond, out of the presence of her said husband, the nature

of her rights, which are here detailed, to wit: The wife has a legal mortgage on the property of her husband in the following cases:

1st. For the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in
339 marriage, reckoning from the celebration of the marriage.

2d. For the restitution and reinvestment of the dotal property which came to her after marriage, either by succession or donation, from the day the succession was opened or the donation perfected.

3d. For the reimbursing the amount of her paraphernal property alienated by her and received by her husband, or otherwise disposed of for his individual interest.

4th. To indemnify her for debts which she may have contracted with her husband; and

5th. For the donations which may have been made to her by her husband on account of their marriage, and that by renouncing said rights on the square of ground hereinbefore sold, she would deprive herself irrevocably of all recourse thereon.

And the said Mrs. Raymond did thereupon declare to me, notary, that she fully understood the nature and extent of her said rights
340 on the property of her said husband, and that she nevertheless did persist in her intention of renouncing the same in favor of the said purchasers, on the property hereinbefore sold. And the said Wm. C. Raymond, being now present, assisting and authorizing his said wife in the execution of these presents, and consenting thereto, she, the said Mrs. Raymond, did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said rights and mortgages on the property hereinbefore described and sold in favor of the said Beauregard, May, and Graham, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus done and passed in my office, at the city of New Orleans aforesaid, in the presence of Henry Ducatel and Andre Pelaune, both
341 of this city, competent witnesses, who hereunto sign their names with the said parties, and me, the said notary.

(Signed) M. A. L. RAYMOND.
G. T. BEAUREGARD.
A. C. GRAHAM.
W. C. RAYMOND.
TH. P. MAY.
HENRY DUCATEL.
A. PELAUNE.
AMEDEE DUCATEL. *N. P.*

A true copy:
[SEAL.] (Signed)
AMEDEE DUCATEL,
Not. Pub.

[5c. int. rev. stamp affixed and cancelled.]

Document A⁹.—Filed with and referred to in the foregoing testimony of T. P. May.—Power of attorney by Aug. C. Graham to Thos. P. May.

Know all men by these presents, that I, Augustus C. Graham, of the city of , State of , do hereby nominate, constitute,
342 and appoint Thomas P. May, of the city of New Orleans, State of Louisiana, to be my true and lawful attorney for me and in my name and behalf, and in my place and stead to transact all business and

concerns of whatever kind, nature, or description soever the same may be, in which I now have, or may hereafter have, any interest, whether it be with individuals, partnerships, or with corporate bodies; and for me, and in my name and behalf, and in my place and stead, to do and perform all the acts and things which may become requisite and necessary, or be convenient and useful, for and in the transaction of any such business or concerns as fully as I myself could do if I were present, and to that end I now specially authorize and empower him, the said Thomas P. May, to pledge, sell, and transfer any stock standing, or which may here-
343 after stand, in my name on the books of any corporate body; to receive and receipt for any dividends that may be declared on the same; to deposit money in banks and draw checks in my name; to draw, endorse, and accept bills of exchange, and draw and endorse promissary notes; to endorse in my name and lodge promissory notes and bills of exchange for collection, and to withdraw the same at discretion; to borrow money and contract obligations with banks or other coporate bodies, partnerships, or individuals, whether on promissory notes or obligations drawn in my or his own favor, or drawn in favor of any other person or persons, partnerships, or coporate bodies, without limits as to amount, and from time to time to sign for the renewal of any part reloaned; to receive and acknowledge notices of protest of all or any bills of exchange, drafts, and promissory notes; to sell
344 and buy real estate for me and in my name for such prices and on such terms and conditions as my said attorney may, in his discretion, think fit; to dissolve any partnership in which I am, or may hereafter, be a partner; to make any settlement by transaction, compromise, or otherwise, of any business, concern, or matter in which I am now or may hereafter have an interest; and to do and perform all acts, and to sign and execute all instruments in writing, which may be necessary and requisite to carry into effect the said powers.

And I hereby promise and bind myself to ratify and confirm all the acts done and performed by the said Thomas P. May for me and in my name under and in virtue of the said powers herein conferred and given, and to hold the same to be as binding and valid as though the same had been done, performed, and executed by myself in my
345 own proper person.

In witness whereof I have hereunto set my hand and seal in the city of New York, on this the twenty-ninth day of September, 1866.

(Signed) A. C. GRAHAM. [SEAL.]

In presence of—

(Signed) GEORGE CHALMERS.

CITY AND COUNTY OF NEW YORK, *ss:*

On this twenty-ninth day of September, A. D. 1866, before me, personally appeared Augustus C. Graham, to me known to be the individual described in, and who executed, the foregoing instrument, and who acknowledged to me that he executed the same.

I certify the foregoing to be a true and correct copy of the original power of attorney annexed for reference to an act of agreement between Augustus C. Graham and Charles Hodges, passed before me, notary, on the twenty-third day of October, eighteen hundred and sixty-six.
346 New Orleans, January 9th, 1869.

[SEAL.] (Signed) T. O. STARK,
Not. P'c.

[5c. int. rev. stamp affixed and cancelled.]

Order of continuance.—Extract from the minutes of Tuesday, April 6th, 1869.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTOM RAILROAD Co. & als. } No. 5359.

This cause was called up—Elmore & King for the complainants; U. S. atty, C. Dufour, and L. E. Simonds for defendants—when it is ordered that the same be continued till to-morrow, at 11 a. m.

Hearing and continuance.—Extract from the minutes of Wednesday, April 7th, 1869.

347 FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

This cause came up for trial—Elmore & King, and Case & Rouse, for complainants; U. S. attorney, C. Dufour, H. C. Miller, L. E. Simonds, and J. A. Campbell for defendants—when, after hearing the pleadings, evidence, and argument, the cause is continued till to-morrow, at 11 a. m.

Note of evidence.—Filed April 7th, 1869.

Circuit court of the United States, district of Louisiana.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Co. & als. } No. 5359.

348 Plaintiff offered the lease marked "A," Exhibits B and C, return to commission D, and documents attached.

Defendants offered power of attorney E; assignment F & G; documents H, I, & K; also the act of warranty from the United States to the purchasers of the road, copy to be furnished; also acts of sale L, M, N, O, P; the testimony of T. P. May taken under commission and account Q.

Acts and documents filed with Beauregard's testimony are in evidence.

Defendants offered act of the legislature, March, 1867; also ordinance of the city of New Orleans, copy to be furnished.

Plaintiff offered the testimony of Graham & al. marked R, also the testimony of Louis Meigs & al. marked S.

349 *Documents offered in evidence April 7th, 1869.*

Lease marked "A" offered by plaintiff, to be found transcribed at page 11.

Exhibit B, offered by plaintiff, to be found transcribed at page 25.

Exhibit C, offered by plaintiff, to be found transcribed at page 31.

Return to commission D and documents attached, to be found transcribed at page 145 to page 190.

Testimony of Graham & al., marked R, offered by plaintiff, to be found transcribed at page 223 to page 243.

Testimony of Louis Meigs & al., offered by plaintiff, to be found transcribed at page 251.

350 Power of attorney "P" offered by defendants, to be found transcribed at page 341.

Assignments F and G, offered by defendants, to be found transcribed at page 72 to page 85.

Document marked H, offered by defendants, & filed April 7, 1869:

Guarantee by the United States of America to J. Hernandez, A. Bonneval, and G. Binder.

This agreement, made and concluded this thirty-first day of October, A. D. one thousand eight hundred and sixty-seven, by and between Edward Jordan, Solicitor of the Treasury of the United States, acting with the approval of the Secretary of the Treasury, for and on behalf of the United States, of the first part, and Alexander Bonneval,
351 Joseph Hernandez, and George Binder, of the city of New Orleans, parish of Orleans, and State of Louisiana, of the second part, witnesseth: That whereas an act was passed before Gustave Le Gardeur, jr., a notary public in the city of New Orleans, bearing date the 21st day of August, 1867, whereby William Bell, a special agent of the Treasury Department, undertook to convey to the said Alexander Bonneval, Joseph Hernandez, and George Binder, all the rights, titles, interest, shares, claims, and demands of the United States in and to a certain lease of the New Orleans and Carrollton railroad, and the copartnership entered into between Thomas P. May, Augustus C. Graham, and Gustave Toutaut Beauregard, for the purpose of conducting the business of said railroad, together with certain real estate ac-
352 quired for the use and account of said copartnership, being the interest in said property which was acquired by the United States from Thomas P. May and Augustus C. Graham, by act passed before Andrew Hero, jr., a notary in the city of New Orleans, on the 16th day of May, 1867; and whereas the terms and conditions set forth in said act, dated August 21st, 1867, do not meet the approval of the Secretary of the Treasury, and are not in accordance with the proposals made by said Bonneval, Hernandez, and Binder on the 19th of August, 1867, for the purchase of said property, and accepted by the said William Bell, special agent, on the 20th day of August, 1867; and whereas it is also considered that the interest of the United States in said property was not passed to said parties by said act passed before G. Le Gardeur, jr., notary
353 public, on the 21st day of August, 1867; and whereas the said Edward Jordan, Solicitor of the Treasury, in pursuance of authority conferred upon him by law, has executed a conveyance of the interest of the United States in said property to said Bonneval, Hernandez, and Binder, bearing even date herewith, as by reference thereto will more fully and at large appear:

Now, therefore, it is mutually understood and agreed between the parties hereto of the first and second parts that the said last-mentioned conveyance, in connection with this agreement, shall be taken and accepted by said parties in place and in stead of said act of conveyance of August 21st, 1867, and that any force and validity, which said act may have, shall cease and determine upon the execution hereof.

It is further mutually understood and agreed that the sale
354 of said property was made for and in consideration of the price and sum of two hundred and eighty-eight thousand dollars,

payable as follows, to wit: one hundred thousand dollars in cash, one hundred thousand dollars in three months, and eighty-eight thousand dollars in six months from the twentieth day of August, 1867, when the contract was closed between the parties, and that the said Alexander Bonneval, Joseph Hernandez, and George Binder, on the 21st day of August, 1867, in the presence of G. Le Gardeur, jr., notary, paid cash, in United States currency, the sum of one hundred thousand dollars to the said William Bell, special agent on behalf of the United States; and for the balance of the price, to wit, one hundred and eighty-eight thousand dollars, the said parties at the same time made two several promissory notes, dated August 20th, 1867, payable to the order of F. A. Ducros, L. E. Lemarie, and John Dolhonde, at the office of the
355 assistant treasurer of the United States, at New Orleans, and endorsed by said payees, one for the sum of one hundred thousand dollars at three months, and the other for the sum of eighty-eight thousand dollars at six months, after date, which said notes were delivered to the said William Bell, special agent as aforesaid. It is also understood that, to secure the payment of the said two notes, the United States expressly retain the vendor's privilege as granted by the laws of Louisiana. And it is also understood, covenanted, and agreed that all the liabilities due and owing by said May and Graham, as lessees and copartners aforesaid, for account of the aforesaid road, as per the annexed schedule will appear, shall and will be, and the same are hereby, assumed by the purchasers.

356 It is further understood, covenanted, and agreed that the United States shall and will at all times protect the purchasers against, and save them harmless from, any claim which may at any time be set up against them personally, or against the said copartnership, or the property, rights, and effects thereof, by or in the name and for the use of the First National Bank of New Orleans, or its assigns, for the recovery of, or in reference to, an over-draft of seventy-two thousand and nine dollars and nine cents, and a promissory note for forty thousand dollars—in all one hundred and twelve thousand and nine dollars and nine cents, which apparently stand to the debit of G. T. Beauregard, as lessee of the New Orleans and Carrollton railroad, but which in truth and reality are exclusively due and owing to said bank by the said Thomas P. May.

And whereas a certain document purporting to be a transfer
357 of rights by Augustus C. Graham to the Fourth National Bank of New York, was signed, sealed and delivered by the said A. C. Graham on the eighth day of May, one thousand eight hundred and sixty-seven, and subsequent, to wit, on the 15th day of May, 1867, was registered in B. H, folio 812, of the office of conveyances in and for the parish of Jefferson, in the State of Louisiana: Now, therefore, and although the parties hereto refuse to acknowledge, but on the contrary deny and contest the legality, validity, and effect of said document, yet it is expressly agreed, by and between said parties, that the United States shall and will, at all times, protect the purchasers against, and save them harmless from, the said document, and the effects thereof.

And whereas the act passed before G. Le Gardeur, jr., notary,
358 upon the 21st day of August, 1867, herein above-mentioned, contained a clause whereby, for the better protection and safety of the purchasers, it was covenanted and agreed that the aforesaid note for eighty-eight thousand dollars, made by said purchasers, should not be disposed of nor payment thereof demanded, until the aforesaid document, and the registration thereof in the conveyance office, shall have been

annulled, set aside, and cancelled; and in furtherance of said agreement, the said notary public endorsed said agreement on said note: Now, therefore, it is understood and agreed between the parties hereto, that notwithstanding the said agreement, and the endorsement thereof on said note, the said note shall be demandable and payable at the maturity thereof, in the same manner as if said agreement and endorsement had never been made, and that said endorsement shall be cancelled.

359 And the parties of the second part further agree that they will procure the assent of the endorsers of said notes to such cancellation, and to whatever changes are wrought or contemplated in their obligations and liabilities by this agreement.

In witness whereof the said Edward Jordan, Solicitor of the Treasury as aforesaid, has hereunto set his hand and affixed his official seal, and the said Alexander Bonneval, Joseph Hernandez, and George Binder, have set their hands and seals the day and year first above mentioned.

(Signed) EDWARD JORDAN. [SEAL.]
Solicitor of the Treasury.
ALEX. BONNEVAL. [SEAL.]
J. HERNANDEZ. [SEAL.]
GEO. BINDER. [SEAL.]

Witnesses to signature of Edward Jordan, solicitor:

J. M. McKINNEY.
THOMAS DUTTON.

360 Witnesses to signatures of Alexander Bonneval, Joseph Hernandez, and George Binder:

JAS. FAHEY.
M. L. AINSWORTH.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Be it remembered that on the thirty-first day of October, in the year one thousand eight hundred and sixty-seven, before me, the undersigned, a commissioner resident in the District of Columbia, duly commissioned and qualified by the executive authority, and under the laws of the State of Louisiana, to take the acknowledgment of deeds, &c., to be used or recorded therein, personally appeared Edward Jordan, Solicitor of the Treasury of the United States, to me known to be the individual named in and who executed the annexed instrument, and acknowledged to me that he did sign, seal, and deliver the same, as his free act and

361 deed, on behalf of the United States, on the day and year therein mentioned, and for the consideration, uses, and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[SEAL.] (Signed) N. CALLAN,
Commissioner for Louisiana in the District of Columbia.

STATE OF LOUISIANA, *City of New Orleans, ss:*

Be it known that on this sixth day of December, eighteen hundred and sixty-seven, before me, the undersigned notary public, duly commissioned and sworn, in and for the parish of Orleans, and the city of New Orleans, personally appeared Alexander Bonneval, Joseph Her-

nandez, and George Binder, of this city, to me known to be the individuals named in and who executed the foregoing instrument,
362 and acknowledged to me that they did sign and seal the same, and for the purposes therein set forth and expressed, and on this sixth day of December, A. D. 1867.

In faith whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[SEAL.] (Signed) S. MAGNER, *Not. Pub.*

Schedule of debts and bills payable, referred to in the within agreement.

4 notes, for $4,333 33/100 each, given for the horse station stable, and payable 20th December, 1867, & 20th Dec'r, 1868, with 8 % interest		$19,413 31
1 note for $4,166 66/100, given for the square corner of Napoleon and St. Charles street, and payable 8th May, 1868, with 8 % interest		4,833 32
6 notes given to Dr. Elliott for 102 mules, payable at different dates within eight months, with interest		23,340 90
Amount due the Carrollton R. R. Company for old rolling stock, sold by the lessees, and to be accounted for by them		10,000 00
363 2 notes of $8,666 66/100 each, given for the hotel at Carrollton, and payable 2d June, 1867, & 2d June, 1868, with interest, amounting to	$19,413 32	
1 note for $2,666 66/100, given for square of ground near Napoleon avenue, and payable 2d May, 1868, with interest	3,091 10	
		$22,504 42
Pay rolls for month of July		10,521 17
Office rent for July	$125	
Railroad rent, last half of July	$854 16	
		979 16
U. S. tax on July receipts	$490 57	
P. Makinney	$40 00	
		530 57
Stevens & Seymour	$20 00	
Stark, Stauffer & Co	$94 35	
		114 35
Hall, Young & Co	66 92	
McDuff & Co	4,119 10	
Hill & Veazie	24 40	
		4,210 42
Geddes & Shakespeare	$11 69	
Kearney, Blois & Co	$56 00	
H. Perry	$2 00	
		69 69
Horton, Peterson & Fenner	$24 05	
G. A. Morrison	$92 98	
F. Fisher	$156 77	
		273 80
N. O. & C. R. R. Co	$414 85	
Jno. Roony	$1,000	
J. C. Davey	$1,324 90	
		2,739 75

	Taylor & Co	$1,559 85	
	Bridge & Son	45	
	Page & Co	362 37	
			2,006 92
364	J. B. Slawson	$1,400	
	Jno. Stephenson	805	
	J. P. York	100	
			2,305 00
	Dr. Jos. Elliott, mules		9,000 00
	Amount received for old rolling stock sold since last statement of liabilities furnished, and increasing the amount received for rolling stock sold to $20,009 $\frac{80}{100}$		10,009 80
			$122,852 58
	Amount required to complete the road, estimated		40,000 00
			$162,852 52

[Duplicate.]

UNITED STATES TREASURY,
New Orleans, December 7th, 1868.

I hereby certify that Messrs. A. Bonneval, J. Hernandez, G. W. Binder, L. E. Lemarie, F. A. Ducros, and John Dolhonde, makers and endorsers of a note for eighty-eight thousand dollars, ($88,000,) held by me for the United States, have complied with the conditions required by an act made between Edward Jordan, Solicitor of the Treasury,
365 and the makers of the aforesaid note, by binding themselves to pay said note at maturity.

(Signed) JOHN S. WALTON, *A. T. U. S.*

I, the undersigned notary, do hereby certify the foregoing to be true copies of the original documents annexed to an act of deposit in my office, under date of the seventh day of December, 1867.

In faith whereof I grant these presents under my signature and the impress of my seal of office at New Orleans, on this eighth day of April, A. D. 1869.

[SEAL.] (Signed) S. MAGNER,
Not. Pub.

[5c. int. rev. stamp affixed and cancelled.]

Document I, offered by defendants, to be found transcribed at page 60, as Exhibit No. 1.

Document K, offered by defendants, and filed April 7th, 1869:

366 *Fusion between the New Orleans and Carrollton Railroad Company, Gustave T. Beauregard, Alexander Bonneval, Joseph Hernandez, and George Binder.*

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this fifteenth day of October, eighteen hundred and sixty-seven, before me, Selim Magner, a notary public, duly commissioned and sworn in and for the parish of Orleans and the city of New Orleans, personally came and appeared—

1st. Benjamin Laurent Millandon, esquire, of this city, president of the "New Orleans and Carrollton Railroad Company," duly authorized to

act in the premises by virtue of a resolution of the board of directors of said company, adopted at their sitting of the second of October, 1867, of which a certified copy is hereto annexed as part hereof, of the first part.

2d. Stephen Richard Proctor, esquire, of this city, herein act-
367 ing in behalf, and as the duly authorized agent, of Gustave Toutant Beauregard, esquire, also of this city, by virtue of two acts of procuration, passed before A. Ducatel, notary public, in this city, on the third and sixth of August, 1867.

3d. George Binder, esquire, of this city, herein acting as well in his own name and behalf as in his quality of attorney in fact of Joseph Hernandez, also of this city, duly appointed per act of procuration, passed before me, notary, on the twentieth of August, 1867.

4th. Alexander Bonneval, esquire, of this city.

Said Beauregard, Binder, Hernandez, and Bonneval, being parties of the second part. Which appearers mutually declared that taking as a basis an act of the legislature of this State, No. 59, approved March 9th, 1867, entitled "An act for the relief of the Carrollton Railroad Company," and furthermore the proposals made by said parties
368 of the second part to the said New Orleans and Carrollton Railroad Company, party of the first part, a certified copy whereof is hereto annexed for reference as part hereof, together with the resolution of the board accepting the same, and the approval of the majority of the stockholders consenting to make a fusion and consolidate the interest of the stockholders with the said parties of the second part, present owners of a lease made to said Beauregard, by said railroad company, by act passed before me, notary, on the twelfth of April, 1866: Now, therefore, they, said parties, agree and hereby do mutually agree as follows, to wit:

1st. The capital stock, after the signature of this present act, having for object the consolidation of the two interests, shall be eight hundred thousand dollars, to be divided equally between the present stock-
holders of said company and the said parties of the second part,
369 namely, four hundred thousand dollars for the stockholders, and four hundred thousand dollars for the parties of the second part, each share to be of one hundred dollars.

2d. The present fusion to take place on condition that the said parties of the second part shall deliver to the said New Orleans & Carrollton Railroad Company, and shall put said company in immediate possession of all the property, real, personal, rights, title, interest, effects, and assets of whatsoever nature or kind, appertaining to the Carrollton railroad, and in which it may be interested, and whether the same stands in the name of said parties of the second part, or in that of said railroad. And all which rights are held by said parties of the second part
namely: By said Beauregard, under a lease made to him by said
370 Carrollton Railroad Company, by act passed before me, notary, on the twelfth of April, 1866, which lease, in consequence of the present fusion, is cancelled and annulled from this date, and by several purchases of real estate hereinafter mentioned, and by said Binder, Bonneval, and Hernandez, two-thirds, by reason of the purchase made by them from the United States of America, by act before Gustave Le Gardeur, jr., a notary public in this city, on twenty-first of August, 1867.

3d. The New Orleans and Carrollton Railroad Company shall assume and be responsible for all the debts and liabilities for the said Carrollton railroad, whether due by, or claimed from, the lessees or the stock-

holders, and whatever may be the cause, nature, or character, and extent of said debts and liabilities, except, however, the liabilities
371 hereinafter mentioned, and due by said Binder, Hernandez, and Bonneval, and resulting from said act of purchase of the twenty-first of August, 1867. And now in order to carry into effect said agreement, and to merge the interests and liabilities of the stockholders of the said New Orleans and Carrollton Railroad Company, and of said parties of the second part, the New Orleans and Carrollton Railroad Company, herein represented by said Millandon, president, present as aforesaid, is now put into, and acknowledges to be in possession of—

1st. All and singular the rights, titles, and interests, and other franchises of the said Carrollton railroad and the railroad tracks.

2d. All the railroad improvements, the horses and mules, or whatsoever other live stock, the cars, harnesses, rolling stock, engines, and improvements, and appurtenances thereof, of all which a detailed list or schedule is hereunto annexed for reference, and as part hereof,
372 duly signed by said parties and me, notary.

3d. All the bills receivable and interest thereon, amounting to the sum of eight thousand four hundred and eighty-one dollars and sixty cents, and the ready money, amounting to eleven thousand five hundred and fifty-nine dollars and five cents.

4th. All the rights, titles, interests, and actions in warranty of the parties of the second part in and to the following described real estate, to wit:

1st. A certain square of ground, with the buildings and improvements thereon, situate in the city and parish of Jefferson, in this State, designated by the No. sixty-six on a lithographic plan deposited in the office of Adolphe Mazureau, notary public in this city, the said square being comprised within Nayades, Appollo, Milan, and Berlin streets, and containing twenty-four lots, numbered from one to twenty-four inclusive.

373 2d. A certain square of ground, together with the improvements, &c., thereon, situate in the city and parish of Jefferson, in this State, designated by the No. sixty-five, comprised within Napoleon avenue, Berlin, Nayades, and Appollo streets, containing twenty-four lots, numbered from one to twenty-four inclusive, on the above-mentioned plan.

3d. A certain piece or portion of land, situate in the town of Carrollton, parish of Jefferson, in this State, being a triangle, bounded by Levee and First streets and Carrollton avenue, and measuring, more or less, five hundred and eighteen feet front on Carrollton avenue, six hundred and seven feet two inches and a half lines front on First street, and seven hundred and ninety eight feet four inches front on Levee street, with the buildings, improvements, &c., thereon.

374 4th. Seven certain lots of ground situate in the First district of this city, in the square bounded by St. Charles, Felicity, Appollo or Carondelet, and Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven, on a plan deposited in the office of the undersigned notary, as plan No. one hundred and sixteen, according to which plan said lots measure as follows, viz:

Lot No. one, thirty-six feet nine inches front on St. Charles street, by a depth of ninety-four feet between parallel lines. Lots two, three, four, and five, immediately in the rear of lot No. one, adjoin each other, and measure together one hundred and thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch

on the line nearest to St. Charles street, and contiguous to the rear line of lot No. one, about eighty-two feet six inches on the side nearest to Appollo, now Carondelet street, and about one hundred and twenty-seven feet nine inches in the rear. And lots six and seven adjoining each other and extending back to the rear line of the lots fronting on Felicity street, measuring each thirty-one feet eleven inches and five lines front on Polymnia street, by a depth of one hundred and twenty feet between parallel lines, together with the buildings and improvements thereon, and appurtenances thereof, known as the "Horse Station."

All which real estate was acquired by said Beauregard for account of the copartnership existing between him, Thomas P. May, and Augustus C. Graham by four different purchases, to wit:

The firstly described from S. A. Kohn, per act passed before A. Ducatel, notary public, in this city on the thirtieth of April, 1866.

The secondly described from Wm. C. Raymond, per act passed before the same notary, on the fifth day of May, 1866.

The thirdly described from the New Orleans and Carrollton Railroad Company, per act passed before me, notary, on the twenty-ninth of June, 1866.

And the fourthly described from the same company, per act passed before the same notary on the fifteenth of January, 1867.

And by act passed before Gustave Le Gardeur, jr., a notary public in this city, on the twenty-first of August, 1867, the said Alexander Bonneval, Joseph Hernandez, and George Binder acquired the interest of said Thomas P. May and Augustus C. Graham in said real estate, being two-thirds thereof by purchase from the United States of America, the remaining third belonging to him, said Beauregard.

In consideration of the foregoing fusion and delivery of property, the New Orleans and Carrollton Railroad Company shall issue eight thousand shares of its stock, the shares to be of one hundred dollars each, and the parties of the first part shall receive four thousand shares, and the parties of the second part shall receive four thousand shares of said stock, which shares he, said Millandon, binds his said company to issue an order to deliver the same to the parties of the first and second part as herein above agreed.

In further consideration of said fusion, the said New Orleans and Carrollton Railroad Company does hereby assume and binds itself to pay and be responsible for all the debts and liabilities of said Carrollton railroad, and of said parties of the second part, so far as their liabilities for said road are concerned; by reason of all which said New Orleans and Carrolton Railroad Company having, by these presents, consolidated their interest with that of the said parties of the second part, the said railroad company, as one corporate body, becomes and is liable for all debts due by said company and by said parties of the second part, except, however, the indebtedness of the said Binder, Hernandez, and Bonneval, under their said act of purchase of the twenty-first of August, 1867, of which further mention is hereafter made. And the said Binder, for himself and said Hernandez, and said Bonneval for himself, do hereby bind themselves to pay and take up and deliver to the said New Orleans and Carrollton Railroad Company two several promissory notes, dated the twentieth of August, 1867, made and subscribed by them to the order of and endorsed by F. A. Ducros, L. E. Lemarié, and John Dolhoude, payable at the office of the assistant treasurer of the United States in this city—one for one hundred thousand dollars, payable in three months, and the other for eighty-eight thousand

379 dollars, payable in six months, and given in part payment of the purchase price stipulated in said sale of the twenty-first of August, 1867, to which said parties hereby specially refer.

And as a special guarantee to said New Orleans and Carrollton Railroad Company for the payment of said notes by them, said Binder, Hernandez, and Bonneval, they, said Binder for himself and said Hernandez, and said Bonneval for himself, and said Proctor for said Beauregard, do hereby agree to leave in possession of said New Orleans and Carrollton Railroad Company twenty-five hundred shares of the four thousand shares coming to them by reason of this present act of fusion and consolidation of interests, it being, however, agreed and understood that on the payment and delivery to said railroad company, by said parties of the second part, of the said note of one hundred
380 thousand dollars, said parties of the second part shall immediately be entitled to and receive one thousand shares of the twenty-five hundred shares so retained as security, and that on payment of said note of eighty-eight thousand dollars, and the delivery thereof to said company by said parties of the second part, they shall immediately be entitled to and shall receive the remaining fifteen hundred shares of stock.

The said Proctor also binds said Beauregard to deliver up to said railroad company all paid notes on the property presently delivered.

By reference to the annexed certificate of the recorder of mortgages in and for this city and parish, it appears that said property above described and situate in this city, stands encumbered in the name of said parties of the second part—

1st. By the mortgage they granted in favor of the United States
381 of America, per act passed before Gustave Le Gardeur, jr., notary public, on the twenty-first of August, 1867, to secure one hundred and eighty-eight thousand dollars, interest and costs.

2d. By the mortgage they granted in favor of the New Orleans and Carrollton Railroad Company, per act passed before me, notary, on the fifteenth of January, 1867, to secure seventeen thousand three hundred and thirty-three dollars thirty-three and one-third cents, interest & costs.

3d. The general mortgage in favor of Mrs. Marie Celine Avegno, wife of said Alexander Bonneval, resulting from their marriage contract, executed before H. Paul Caire, late notary public in this city, on the twenty-eighth of May, 1853, in and by which act he, said Bonneval, acknowledges to have received and taken charge towards his said wife of the sum of twelve thousand dollars.

382 4th. The general mortgage in favor of the same, resulting from an act of donation passed before A. Ducatel, notary, on the fourteenth of June, 1855, by which said Bonneval took charge towards his said wife of the sum of thirteen thousand three hundred and ten dollars and eight cents.

5th. And by the draining privilege.

And by reference to the annexed certificate of the recorder of the parish of Jefferson, it appears that the property above described and situate in the parish of Jefferson stands encumbered in the name of said parties of the second part: 1st. By the drainage privilege. 2d. The privilege in favor of H. F. Smith, for two hundred and twenty-five dollars for making plank road in front of square No. sixty-six on Apollo street. 3d. The privilege in favor of the same, in the same amount, for making plank road in front of square sixty-five on Apollo street.

383 4th. The privilege in favor of the Southern Paving Co. for laying

pavement in front of square No. sixty-five, in the sum of three thousand five hundred and forty-eight $\frac{61}{100}$ dollars. 5th. The privilege in favor of the same company, for laying pavement in front of square No. sixty-six, in the sum of eighteen hundred and sixty-six $\frac{66}{100}$ dollars. 6th. The privilege in favor of J. Rooney, in the sum of three hundred dollars, for curbing in front of square No. sixty-six. 7th. The privilege in favor of J. Rooney, in the same amount, for curbing in front of square No. sixty-five. 8th. The privilege in favor of the city of Carrollton, for repairing seven hundred and ninety-nine feet of brick pavement on Levee street, in front of square eight, in Carrollton, in the sum of one hundred and thirty-three $\frac{33}{100}$ dollars. 9th. The mortgage
384 which by an act passed before A. Ducatel, notary public, dated the thirtieth of April, 1866, Beauregard, May, and Graham granted in favor of S. A. Kohn, on square No. sixty-six, to secure two notes amounting to five thousand three hundred and thirty-three $\frac{33}{100}$ dollars. 10th. The one which, by an act passed before the same notary, dated the fifth of May, 1866, Beauregard, May, and Graham granted in favor of Wm. C. Raymond, on square No. sixty-five, to secure two notes amounting to eight thousand three hundred and thirty-three $\frac{33}{100}$ dollars. 11th. The privilege which might result from the registry of a lease made on the twenty-fourth of October, 1865, by the New Orleans and Carrollton Railroad Company to Peter Williams, of the triangle in Carrollton and the buildings thereon, known as the "Carrollton Hotel." 12th. The mortgage which, by an act passed before me, notary,
385 on the twenty-ninth of June, 1866, G. T. Beauregard granted in favor of the New Orleans and Carrollton Railroad Company, on the property above thirdly described, to secure two notes amounting to seventeen thousand three hundred and thirty-three $\frac{33}{100}$ dollars. 13th. According to said certificate, it would appear that there exists a general mortgage resulting from the registry of a bond signed by G. T. Beauregard and Thomas P. May, in favor of Mrs. Isadora L. Dowty, wife of A. B. Seelye, for the sum of sixteen thousand dollars, which general mortgage has been given by the recorder of the parish of Jefferson through error; the said New Orleans and Carrollton Railroad Company not in any manner making itself responsible for the payment of said bond. 14th. The one which, by an act passed before G. Le Gardeur, jr., notary public, on twenty-first of August, 1867, A. Bonneval, Joseph
386 Hernandez, and Geo. Binder granted in favor of the United States on all of the above-described property, to secure the payment of the sum of one hundred and eighty-eight thousand dollars.

And to these presents personally intervened—

1st. Mistress Rosema Daunoy, of the full age of majority, the wife of the above-named Joseph Hernandez, herein acting in the abscence of her said husband, by virtue of the hereunto annexed authorization; and 2d. Louis Emile Lemarie, of this city, herein acting as the attorney in fact of Mistress Celine Marie Avegno, wife of the above-named Alexander Bonneval, duly appointed per act of procuration, (containing renunciation,) passed before John G. Nicolay, U. S. consul in Paris, France, on the sixteenth of September, 1867, hereto annexed for reference.

Which appearers, the said Mrs. Hernandez for herself, and said
387 Lemarie as attorney in fact of said Mrs. Avegno, declared, after having taken cognizance of the present act of fusion, which I, notary, carefully read and explained to them, that it is their intention not only to ratify the same, but also to make renunciation, the said

Mrs. Hernandez for herself, and said Lemarie for his said constituent, to all the rights which they have or may have on the above-described property. Whereupon I, the said notary, declared unto them that by the laws of this State they possessed a general mortgage on all the property of the above-named Joseph Hernandez and Alexander Bonneval, and upon that of the community, in case they should renounce thereto—

First. For the restitution of their dower and the reinvestment of dotal property brought by them in marriage.

Second. For the restitution of dotal property by them acquired during marriage, by inheritance, donation, or otherwise.

Third. For indemnity against all debts contracted, or which
388 they may hereafter contract, with their said husbands.

Fourth. For such of their paraphernal property and funds as may have been alienated by their said husbands, or of which they have had or may have the administration or enjoyment, or of which they may otherwise have benefited.

Fifth. For nuptial presents made to them by their said husbands or others.

That in making their intended renunciations the said Mrs. Hernandez for herself, and said Mrs. Bonneval through her said attorney in fact, would deprive themselves irrevocably and forever of all rights of reclamation against the above property, whether under mortgage privilege, or otherwise. Whereupon the said Mrs. Hernandez and said attorney in fact declared that they nevertheless persisted in the intention they had announced to ratify the above delivery of real estate, and to dispossess themselves of all rights which they have or may have thereon, whether by marriage contract, dower, donation, or otherwise;
389 and the said Mrs. Hernandez, for herself, and said Lemarie as attorney in fact aforesaid, again declared that they do hereby renounce, henceforth and forever, all and singular their said rights, and transfer the same to the said New Orleans and Carrollton Railroad Company, its successors and assigns to be had and held by them, and by them enjoyed in law and thereout, and they do hereby bind themselves and their heirs to the said New Orleans and Carrollton Railroad Company, its successors and assigns, that they shall and will at all times acknowledge the validity of the present act of delivery of real estate as above set forth, and of this their renunciation to all the rights they may have on the property thus delivered to the said New Orleans and Carrollton Railroad Company; and that they, said Mrs. Hernandez for herself and said Lemarie, as attorney in fact aforesaid, shall
390 never seek to oppose or impair the force of this act of delivery of property, hereby renouncing the benefit of all laws, privileges, and customs of which they might avail themselves, or which may be in their favor in the premises.

And finally, the herein above-named parties of the first and second part, declared that the real estate, with the buildings thereon, presently delivered by this act of fusion, are valued at the sum of one hundred and eighty-nine thousand and seventy dollars and fifty-eight cents, wherefore the U. S. internal revenue stamps of one hundred and eighty-nine dollars and fifty cents are hereto attached.

And thereupon personally came, and appeared, and intervened in this act, Mistress Rosa Elizabeth Canonge, of the full age of majority, wife of said George Binder, who, being herein duly authorized and assisted by her said husband, took cognizance of the foregoing act of fusion which I, notary, carefully read and explained to her,
391 and having so done, she declared that it was her intention not

only to ratify said act, but to make renunciation of all rights she has by mortgage or otherwise, on the real estate therein delivered, upon which I, notary, declared to her separately and apart from her said husband, and out of his presence, as it is my duty, that by the laws of this State she possessed a general mortgage on all the property of her said husband, and upon that of the community in case she should renounce thereto:

First, for the restitution of her dower and the re-investment of dotal property brought by her in marriage.

Second, for the restitution of dotal property by her acquired during marriage by inheritance or otherwise.

Third, for indemnity against all debts contracted, or which she might hereafter contract, with her said husband.

Fourth, for such of her paraphernal property and funds as may
392 have been alienated by her said husband, or of which he has had, or may have the administration or enjoyment, or of which she may otherwise have benefitted.

Fifth, for nuptial presents, made to her by her said husband or others.

That in making her intended renunciation, she would deprive herself irrevocably and forever of all rights of reclamation against said real estate, whether under mortgage privilege or otherwise.

Whereupon the said wife declared that she still persisted in the intention she had announced to ratify said act and to dispossess herself of all rights and liens she has upon said real estate, whether by marriage contract, dower, donation, or otherwise; and the said husband, being now again present before me, and authorizing his said wife, she again declared that she does hereby formally renounce, henceforth and forever, all and singular her said rights, and transfer the same to the said New Orleans and Carrollton R. R. Co. and assigns, to be had and
393 held by them and [them and] by them enjoyed in law, and thereout; and she binds herself and her heirs to the said New Orleans and Carrollton R. R. Co. and assigns, that she shall and will at all times acknowledge the validity of the present act, and of the renunciation she now makes of all rights which she has or may have in and to the property delivered, and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby renouncing the benefit of all laws, privileges, and customs of which she might avail herself, or which are in her favor in the premises.

Done and passed at New Orleans, the fifteenth day of October, eighteen hundred and sixty-seven, in the presence of Edward G. Gottschalk, and James Fahey, witnesses, residing in this city, who have signed their names with the parties and me, notary, after reading thereof.

(Signed) ALEX. BONNEVAL, p. pro.
394 JOS. HERNANDEZ.
GEO. BINDER.
GEO. BINDER.
G. T. BEAUREGARD,
P. pro S. RICH'D PROCTOR.
L. E. LEMARIE.
R. E. BINDER.
ROSEMA HERNANDEZ.
B. L. MILLANDON.
E. G. GOTTSCHALK.
JAS. FAHEY.
S. MAGNER, *Not. Pub.*

A true copy. New Orleans, 18th October, 1867.
[SEAL.] (Signed) S. MAGNER, *Not. Pub.*
[5c. int. rev. stamp affixed and cancelled.]

Registered in conveyance office, in Book II, fo. 970.
Parish of Jefferson, October 22d, 1867.
(Signed) ERNEST COMMAGERE, *Recorder.*

The act of warranty from the United States to the purchasers of the road, offered by defendants, and filed April 7th, 1869:

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans:

Be it known that on this twenty-first day of the month of
395 August, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the ninety-second, before me, Gustave Le Gardeur, jr., a notary public duly commissioned and sworn in and for the parish and city aforesaid, herein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. William Bell, of the city of Washington, District of Columbia, herein acting as the duly appointed and qualified special agent of the United States of America, by virtue of the credentials exhibited to me, notary; which said appearer declared in his said capacity, that for the consideration and upon the terms and conditions hereinafter expressed, he does by these presents sell,
396 transfer, set over, and assign, with full warranty, unto Messrs. Alexander Bonneval, Joseph Hernandez, and George Binder, all of this city, they being here also present, accepting and purchasing, in the proportion of one undivided third part each, for themselves, their heirs and assigns, all and singular the rights, titles, interest, share claims, and demands of every nature and kind whatever of the said United States of America, in and to—

1st. The lease of the New Orleans and Carrollton railroad, and other franchises thereof, and the railroad tracks, rolling stock, engines, cars, live stock, and other appurtenances thereunto belonging or in any wise appertaining.

2d. The copartnership entered into between Thomas P. May and Augustus C. Graham and Gustave Toutant Beauregard, for the purpose of conducting the business of the said railroad, by an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April,
397 one thousand eight hundred and sixty-six, by which said act of copartnership the said parties thereto became interested in the proportion of one-third part, and interest each, in the lease and other franchises of said railroad, the railroad tracks, engines, cars, stock, and other appurtenances thereof, and which said lease was obtained by the said G. T. Beauregard for the joint account of himself and the said May & Graham, as per act of lease in the premises, passed before S. Magner, a notary in this city, on the twelfth day of April, one thousand eight hundred and sixty-six.

3d. And the real estate hereinafter described, to wit:

I. A certain square of ground, with all the buildings, improvements, rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, situate in the city of Jefferson, parish of Jefferson,
398 in this State, designated by the number sixty-six on a lithographic plan deposited in the office of Adolphe Mazureau, a notary in this city; the said square comprised between Nayades, Appollo, Milan, and

Berlin streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive.

II. A certain square of ground, together with the improvements thereon, and all the rights, ways, privileges, and advantages thereunto belonging or in any wise appertaining, situate in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades, and Apollo streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive, in conformity with a lithographic plan deposited in the office of Adolphe Mazureau, a notary in this city.

399 III. A certain piece or portion of land situate in the town of Carrollton, parish of Jefferson, in this State, being a triangle bounded by Levee street, Carrollton avenue, and First street, and measuring, more or less, five hundred and eighteen feet front on Carrollton avenue, six hundred and eleven feet two inches, and one and a half line front on First street, and seven hundred and ninety-eight feet four inches front on Levee street, together with all the buildings and improvements thereon, and appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging.

IV. Seven certain lots of ground situate in the first district of this city, in the square bounded by St. Charles, Felicity, Apollo or Carondelet, and Polymnia streets, designated by the numbers one, two, three, four, five, six and seven, on a plan deposited in the office
400 of S. Magner, a notary in this city, as plan number one hundred and sixteen, according to which plan said lots measure as follows, to wit:

Lot No. one, thirty-six feet nine inches front on St. Charles street, by a depth of ninety-four feet between parallel lines.

Lots two, three, four, and five, immediately in rear of said lot No. one, adjoin each other, and measure together about one hundred and thirty-two feet six inches front on Felicity street; about one hundred and fourteen feet one inch on the line nearest to St. Charles street, and contiguous to the rear line of lot No. one, about eighty-two feet six inches on the side nearest to Apollo now Carondelet street, and about one hundred and twenty-seven feet nine inches in the rear.

And lots six and seven adjoining each other, and extending
401 back to the rear line of the lots fronting on Felicity street, measure each thirty-one feet eleven inches and five lines front on Polymnia street, by a depth of one hundred and twenty feet between parallel lines. Together with all and singular the buildings and improvements thereon, and appurtenances thereof, known as the "Horse Station," and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in any wise appertaining. Which said real estate was acquired for the use and account of the aforesaid copartnership, as the books thereof will show by four different purchases, to wit:

One from S. A. Kohn, by act passed before A. Ducatel, a notary in this city, on the thirtieth day of April, one thousand eight hundred and sixty-six.

Another from Wm. C. Raymond, by act passed before the same notary, on the fifth day of May, one thousand eight hundred and sixty-six.

402 The third from the New Orleans and Carrollton Railroad Company, by act passed before S. Magner, a notary in this city, on the twenty-ninth of June, one thousand eight hundred and sixty-six.

And the fourth and last from the same company, by act passed before the same notary, on the fifteenth day of January, one thousand eight hundred and sixty-seven.

To have and to hold the hereinabove-conveyed right, title, interest, share, and demand of the United States, in and to the above-described property unto the said Alexander Bonneval, Joseph Hernandez, and George Binder, their heirs and assigns forever.

The United States are the owners of the hereinabove-conveyed rights, title, interest, share, and demand in and to the above-described property, which right, title, interest, share, and demand embrace, cover, and amount to two-thirds of the whole, for having acquired the same from Thomas P. May and Augustus C. Graham, by act passed before Andrew Hero, junr., a notary in this city, on the sixteenth day of May, one thousand eight hundred and sixty-seven.

This sale is made and accepted for and in consideration of the price and sum of two hundred and eighty-eight thousand dollars, for the two-thirds part or interest herein transferred in the above-described property, payable as follows, to wit: One hundred thousand dollars cash, one hundred thousand dollars in three months, and eighty-eight thousand dollars in six months from the twentieth instant, when this contract was closed between the parties.

Wherefore the said Alexander Bonneval, Joseph Hernandez, and George Binder have presently, and at the sight of the notary and witnesses undersigned, paid cash in United States currency, the sum of one hundred thousand dollars to the said William Bell, who, in his aforesaid capacity, acknowledges the receipt thereof, and grants full and ample acquittance for the same. And for the balance of the price, to wit, one hundred and eighty-eight thousand dollars, the said purchasers have furnished two several promissory notes, dated the twentieth instant, made and subscribed by them to the order of and endorsed by Messrs. F. A. Ducros, L. E. Lemarie, and John Dalhoude, and made payable at the office of the assistant treasurer of the United States, in this city, one for the sum of one hundred thousand dollars at three months, and the other for the sum of eighty-eight thousand dollars, at six months after date. Which said notes, after being signed "ne varietur" by the undersigned notary, to identify them, herewith were handed over and delivered to the said William Bell, who, in his said capacity, acknowledges the receipt thereof.

It is well understood that to secure the payment of the said two notes, the United States expressly retain the vendor's privilege as granted by the laws of Louisiana. It is also well understood, covenanted, and agreed that all the liabilities due and owing by said May and Graham, as lessees and copartners aforesaid, for account of the aforesaid road, as per the annexed schedule will appear, shall and will be, and the same are hereby assumed by the purchasers.

It is further understood, covenanted, and agreed that the United States shall and will at all times protect the purchasers against and save them harmless from any claim which might at any time be set up against them personally, or against the aforesaid copartnership or the property, rights, and effects thereof, by or in the name and for the use of the First National Bank of New Orleans, or assigns for the recovery of, or in reference to an over-draft of seventy-two thousand and nine dollars and nine cents, and a promissory note for forty thousand dollars, in all one hundred and twelve thousand and nine dollars and nine cents, which apparently stand to the debit of G. T. Beauregard, as lessee of the New Orleans and Carrollton railroad, but which in truth and reality are exclusively due and owing to said bank by the said Thomas P. May, and for the better protection of said purchasers, the government, through its agent aforesaid, agrees to and

does hereby assume the payment of said indebtedness of one hundred and twelve thousand and nine dollars and nine cents to the said First National Bank of New Orleans. And whereas a certain document, purporting to be a transfer of rights, by Augustus C. Graham to the Fourth National Bank of New York, was signed, sealed, and delivered by the said A. C. Graham, on the eighth day of May, one thousand eight hundred and sixty-seven; and subsequently, to wit, on the fifteenth day of May, one thousand eight hundred and sixty-seven, was registered in Book II, folio 812, of the office of conveyances in and for the parish of Jefferson, in this State. Now, therefore and although the parties hereto refuse to acknowledge, but on the contrary, strenuously deny and contest the legality, validity, and effect of said document, yet it is expressly agreed by and between said parties that the government of the United States shall and will at all times warrant and protect the purchasers herein against the said document, and the effects thereof, and for the better protection and safety of the purchasers, it is further covenanted and agreed that the note for eighty-eight thousand dollars hereinabove furnished, shall not be disposed of, nor payment thereof demanded until the aforesaid document and the registration thereof in the conveyance office shall have been annulled, set aside, and cancelled; and in furtherance of this agreement, the said note of eighty-eight thousand dollars was handed over to the notary undersigned, who endorsed thereon the said agreement, and immediately returned the note to the said William Bell. And now to these presents personally came and intervened Stephen Richard Proctor, esq., of this city, and herein acting in behalf and as the duly authorized agent of G. T. Beauregard, esq., by virtue of an act of procuration passed before A. Ducatel, a notary in this city, on the sixth day of August, one thousand eight hundred and sixty-seven, which said appearer declared that he does by these presents accept notice of the foregoing transfer in the name and as agent aforesaid.

And also to these presents personally came and intervened Samuel A. Torrey esq., of this city, who declared that as the attorney of the United States for the district of Louisiana, he has examined the present act and approves it, and the said district attorney further certifies that he has examined the instructions given to the said William Bell; that by these instructions, he is fully authorized to enter into and execute the present contract; and that said contract has been approved by Governor Flanders, Mr. John S. Walton. assistant treasurer of the United States in this city.

The United States being the sellers, the internal revenue stamps are not required.

Thus done, and passed at New Orleans, in my office, on the day, month, and year aforesaid, in the presence of Messrs. Gustave Le Gardeur, sen'r, and Armand Pitot, jr., competent witnesses who have signed with the parties and me, notary, after reading the whole.

(Original signed) WM. BELL, *Special Agent.*
ALEX. BONNEVAL.
J. HERNANDEZ.
GEO. BINDER.
G. T. BEAUREGARD,
P. pro S. RICHARD PROCTOR.
SAM. H. TORREY, *U. S. Att'y.*
A. PITOT, JR.
G. LE GARDEUR.
G. LE GARDEUR, JR., *Not. Pub.*

Debts and bills payable, referred to in the annexed proposal.

4 notes for $4,333 33/100 each, given for the horse-station stable, and payable 20th Dec'r, 1867, and 20th Dec'r, 1868, with 8 % interest			$19,413 31
1 note for $4,166 66 given for the square, corner of Napoleon and St. Charles street, & payable 8th May, 1868, with 8 % interest			4,833 32
411 6 notes given to Dr. Elliott for 102 mules, payable at different dates within eighteen months, with interest			23,340 90
Amount due to the Carrollton Railroad Company for old rolling stock sold by the lessees and to be accounted for by them.			1,000 00
2 notes of $8,666 66/100 given for the hotel at Carrolton, and payable 2d June, 1867, & 2d June, 1868, with interest, amounting to	$19,413 32		
1 note $2,666 66 given for square of ground near Napoleon avenue, and payable 2d May 1868, with interest	3,091 10		
		22,504 42	
Pay-rolls for month of July			10,521 17
Office rent for July	125 00		
Railroad rent last half of July	854 16		
		979 16	
U. S. tax on July receipts	490 57		
P. Makinney	40 00		
		530 57	
Stephens & Seymour	20 00		
Stark, Stauffer & Co	94 35		
		114 35	
Hall, Young, & Co	66 92		
McDuff & Co	4,119 10		
Hill & Veazie	24 40		
		4,210 42	
Geddes & Shakespeare	11 69		
Kearney, Blois & Co	56 00		
H. Perry	2 00		
		69 69	
Horter, Peterson & Fenner	24 05		
G. N. Morrison	92 98		
F. Fischer	156 77		
		273 80	
412 N. O. & C. R. R. Co	414 85		
Jno. Rooney	1,000 00		
I. C. Davey	1,324 90		
		2,739 75	
Taylor & Co	1,599 55		
Bridge & Son	45 00		
Page & Co	362 37		
		2,006 92	
J. B. Slawson	1,400 00		
Jno. Stevenson	805 00		
J. R. Turck	100 00		
		2,305 00	
Dr. Jos. Elliott, mules			9,000 00

Amount received for old rolling stock sold since last statement of liabilities furnished & increasing the amount received for rolling stock, sold, to $20,009 80.....	10,009 80
	122,852 58
Amount required to complete the road, estimated.....	40,000 00
	$162,852 58

I certify the above statement is correct.
(Signed) S. RICH'D PROCTOR, *Treas'r.*
(Signed) P. McBRIDE, *Bookkeeper.*

A true copy from the original extant for reference among the records of my office.
413 New Orleans this eighth day of April, A. D. 1869.
[SEAL.] (Signed) G. LE GARDEUR, *Not. Pub.*

[5c. int. rev. stamp affixed and cancelled]

Document L offered by defendants, to be found transcribed at page 332 as document S S.

Document M offered by defendants, to be found transcribed at page 307 as document P P.

Document N offered by defendants, to be found transcribed at page 313 as document Q Q.

Document O offered by defendants, to be found transcribed at page 304 as document O O.

Document P offered by defendants, to be found transcribed at page 323 as document R R.

414 Testimony of T. P. May, offered by defendants, to be found transcribed at page 277 and at page 297.

Account Q offered by defendants, to be found transcribed at page 263 as document A[5].

Ordinance of the city of New Orleans, offered in evidence by defendants, and filed April 7th, 1869 :

[No. 123.—New series.]

Resolved, That section 8, of ordinance No. 45, granting the right of way for a double track railroad on Baronne street to G. T. Beauregard, be so amended as to read as follows :

SECTION 8. Baronne street from Canal street to Triton Walk, thence around Tivoli Circle to the neutral ground on St. Charles street, the streets and bridges to be kept in good repair at the expense of the lessee during the continuance of the lease, and the said road from
415 Toledano street to Tivoli Circle, shall be kept subject to the charter of the Carrollton Railroad Company.

(Signed) WM. McCULLOCH,
President Board of Assistant Aldermen.
(Signed) A. W. BOSWORTH,
President Board of Aldermen.

Approved July 2d, 1866.
(Signed) JOHN T. MONROE, *Mayor.*

CITY HALL, NEW ORLEANS, *April 8th*, 1869.

I certify the foregoing to be a correct transcript from the records on file in this office.

(Signed) JOHN TOBIN,
Sec'y Board of Ass't Aldermen.

[No. 45.—New series.]

Resolved, That the mayor of the city of New Orleans be, and he is hereby, authorized and empowered to enter into contract by notarial act or otherwise with G. T. Beauregard, lessee of the New Orleans and Carrollton railroad for the right of way to establish a double-track
416 railroad, commencing on Baronne street, at or near the [the] intersection of Canal street; thence on Baronne street to Delord street, on Delord street to St. Charles street, and on St. Charles street to Toledano street, or the upper limits of the city, under the following terms and conditions, to wit:

1st. The rails to be used in the construction of the road on Baronne street and around Tivoli Circle, to be of the same pattern as those now in use by the city railroad company, the lumber to be of the best quality of swamp cypress or upland yellow pine, free from sap, and of sizes to be designated by the city surveyor.

2d. The cars to be of the most approved pattern, and to seat, if a single car, nine persons on each side, and if a double car, twelve persons on each side.

3d. The cars to be run at intervals not greater than every five minutes from daylight until 10 p. m., and every half hour from 10 p. m. until midnight.

417 4. The rate of speed not to exceed six miles per hour. Each car to have a prominent light in front and a bell on the horse or mule.

5th. The rate of fare from Canal street to Toledano street, or for intermediate distances up or down, to be five cents for each passenger.

6th. The work on the road to be commenced by the 1st of June, 1866, and to be finished and the cars running by the 1st of January, 1868. The city surveyor to furnish the lines and levels for the road and to give in his specifications full directions how the work is to be done, and the kind of material to be used. The entire construction of the road to be supervised by said surveyor until the work is completed.

7th. The right of way to be granted to said Beauregard for the said New Orleans and Carrollton Railroad Company during the continuance of their charter.

418 8th. The streets through which the road is built to be kept in good repair during the continuance of the lease at the expense of the lessee, and—

9th. The city not to be responsible for any work or material furnished for the road; and every outlay thereon, either for construction, operation, or maintenance to be borne by said lessee.

SECTION 2. That for and in consideration of the privilege thus granted, the said lessee does promise and agree within eighteen months from the date of signing the said notarial act, to discontinue the use of steam cars on said road within the city limits, and does further promise and agree in behalf of said railroad company, that said steam cars shall not be used thereafter.

(Signed) WM. McCULLOCH,
President Board of Assistant Aldermen.

(Signed) GEO. CLARK,
President pro tem. Board of Aldermen.

Approved May 10th, 1866.
419 (Signed) GEO. CLARK,
Mayor pro tem.

CITY HALL, NEW ORLEANS, *April 8th*, 1869.

I certify the foregoing to be a correct transcript from the records on file in this office.
(Signed) JOHN TOBIN,
Sec'y Board of Ass't Aldermen.

Hearing and submission of cause.—Extract from the minutes of Thursday, April 8th, 1869.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLLTON R. R. C. & ALS. } No. 5359.

This cause came up pursuant to adjournment, the counsel engaged being present; and after hearing further argument the court took time to consider.

420 *Judgment from judgment docket.*

United States circuit court, fifth circuit and district of Louisiana.—April term, 1869.

NEW ORLEANS, *Saturday, May 15th*, 1869.

Court met pursuant to adjournment. Present: Hon. E. H. Durell, district judge.

FOURTH NATIONAL BANK OF NEW YORK
vs.
NEW ORLEANS AND CARROLTON RAILROAD Company et als. } No. 5359.

For reasons orally assigned by the court, it is ordered, adjudged, and decreed, that there be judgment in favor of the defendant, the New Orleans and Carrolton Railroad Company; that the bill be dismissed, with a right to the plaintiffs, the Fourth National Bank of New York, to bring suit, if it pleases, against G. T. Beauregard, T. P. May, and A. C. Graham, for a settlement of whatever partnership existed
421 between them prior to the transfer by Thomas P. May to the United States, on the 14th and 16th of May, 1867.

Judgment rendered May 15th, 1869.
Judgment signed May 20th, 1869.
(Signed) E. H. DURELL, *Judge.*

Petition of appeal and order thereon.—Filed June 30th, 1869.

To the hon. the circuit court of the United States, for the fifth circuit district of Louisiana, in chancery:

The petition of the Fourth National Bank of New York respectfully represents that the suit of the said bank against the New Orleans and Carrollton Railroad Company, and G. T. Beauregard, and Joseph Hernandez, and G. W. Binder, and Alexander Bonneval, in this hon. court

in chancery, and of the docket No. 5359, a final judgment was rendered against the petitioner and in favor of the defendants, on the
422 fifteenth day of May, 1869, and the same was signed on the 20th day of May, 1869, in which judgment there was manifest error, which will work irreparable injury to the petitioner, unless relief can be obtained by an appeal to the Supreme Court of the United States.

Wherefore petitioner prays that an appeal be allowed to the said Supreme Court, upon the petitioner giving bonds with good and sufficient security conditioned as the law directs, for the sum of five hundred dollars; that the same be made returnable to the said Supreme Court, on the 1st Monday of December next, and that the above-named defendants be duly cited to appear and answer the same, and for all other relief in the premises, &c., &c.

(Signed) ELMORE & KING,
Solicitors for Complainant.

Order.

An appeal is allowed in this case as prayed for, returnable to the
423 Supreme Court of the United States on the first Monday of December next, the appellants giving bonds in the sum of five hundred dollars, with good and solvent security, and conditioned as the law directs.

June 30th, 1869.

(Signed) E. H. DURELL, *Judge.*

Bond for appeal.—Filed June 30th, 1869.

United States circuit court.

FOURTH NATIONAL BANK OF THE CITY OF New York
vs.
NEW ORLEANS & CARROLTON R. R. CO., G. T. Beauregard, et als. } No. 5359.

Know all men by these presents, that we, the Fourth National Bank of New York, as principal, and Richard S. Venables, as surety, are held and firmly bound, jointly and severally, unto the New Orleans
424 and Carrolton Railroad Company, and G. T. Beauregard, and Joseph Hernandez, and G. W. Binder, and Alexander Bonneval, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said New Orleans and Carrolton Railroad Company, G. T. Beauregard, Joseph Hernandez, G. W. Binder, A. Bonneval, or any one of them, their heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated the thirtieth day of June, in the year of our Lord eighteen hundred and sixty-nine.

Whereas the said Fourth National Bank of New York has this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district
425 of Louisiana, praying for an appeal from a final judgment against the said bank in its suit against the said New Orleans and Carrolton Railroad Company, G. T. Beauregard, Joseph Hernandez, G. W. Binder, and A. Bonneval:

Now the condition of the above obligation is, that we, the above-bounden Fourth National Bank of New York, and Richard S. Venables, will well and truly pay to the said New Orleans and Carrolton Railroad Company, G. T. Beauregard, G. W. Binder, Joseph Hernandez, & A. Bonneval, the defendants in said suit, all such damages as they may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) FOURTH NATIONAL BANK OF NEW YORK,
Per ELMORE & KING, *Att'ys & Solicitors.* [L. S.]
(Signed) RICH'D S. VENABLES. [L. S.]

426 Signed, sealed, and delivered in the presence of—
(Signed) WM. W. KING.

Richard S. Venables, the surety on the within bond, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above his just debts and liabilities.

(Signed) RICH'D S. VENABLES.

Sworn to and subscribed before me June 30th, 1869.
(Signed) F. B. VINOT, *D'y Cl'k.*

427 UNITED STATES OF AMERICA,
Circuit Court of the United States,
Fifth Circuit and District of Louisiana, Clerk's Office:

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 426 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of the Fourth National Bank of the City of New York vs. New Orleans & Carrolton R. R. Co., G. T. Beauregard, et. als. No. 5359 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 4th day of September, A. D. 1869.

[SEAL.] D. URBAN, *Clerk*

[5c. int. rev. stamp canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law; and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 4th day of September, A. D. 1869.

E. H. DURELL, *Judge.*

[Five-cent internal revenue stamp canceled.]

428 THE UNITED STATES OF AMERICA, *District of Louisiana:*

The President of the United States to the New Orleans & Carrolton Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the Fourth National Bank of the City of New York is plaintiff and appellant, and you & others are defendants, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

E. H. DURELL, *Judge.*

429 (Indorsed:) N. O. Carrolton R. R. Co. United States circuit court. No. 5359. Fourth National Bank of the City of New York vs. New Orleans & Carrolton R. R. Co., G. T. Beauregard, & al. Citation.

Marshal's return.

Received Jul. 3, 1869, by the U. S. marshal, and on the same day, month, and year served a copy hereof on the N. O. & Carrollton R. R. Co., by leaving the same with its president, G. T. Beauregard, 118 Camp st., New Orleans.

N. O., July 5, '69.

S. W. REED, *D'y U. S. Marshal.*

430 THE UNITED STATES OF AMERICA, *District of Louisiana*:

The President of the United States to Joseph Hernandez, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the Fourth National Bank of the City of New York is plaintiff and appellant, & you & others are defendants, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

E. H. DURELL, *Judge.*

431 (Indorsed:) Joseph Hernandez. United States circuit court. No. 5359. Fourth National Bank of the City of New York vs. New Orleans & Carrolton R. R. Co., G. T. Beauregard, & al. Citation.

Marshal's return.

Received Jul. 3, 1869, by the U. S. marshal, and on the same day, month, & year served a copy hereof on Jos. Hernandez, pl't'f, at his office, No. 11 Carondelet st., N. O.

S. W. REED, *D'y U. S. Marshal.*

432 THE UNITED STATES OF AMERICA, *District of Louisiana:*

The President of the United States to G. W. Binder, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the Fourth National Bank of the City of New York is plaintiff & appellant, and you and others are defendants, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

E. H. DURELL, *Judge.*

433 (Indorsed:) G. W. Binder. United States circuit court. No. 5359. Fourth National Bank of the City of New York vs. New Orleans & Carrolton R. R. Co., G. T. Beauregard, & al. Citation.

Marshal's return.

Received Jul. 3, 1869, by the U. S. marshal, and on the same day, month, and year, served a copy hereof on G. W. Binder, pl'ff, at his office, 24½ Carondelet st., N. O.

S. W. REED, *D'y U. S. Marshal.*

434 THE UNITED STATES OF AMERICA, *District of Louisiana:*

The President of the United States to Alexander Bonneval, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petition & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein the Fourth National Bank of the City of New York is plaintiff & appellant, and you & others are defendants, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

E. H. DURELL, *Judge.*

435 (Indorsed:) Alexander Bonneval. United States circuit court. No. 5359. Fourth National Bank of the City of New York vs. New Orleans & Carrolton R. R. Co., G. T. Beauregard, & al. Citation.

Marshal's return.

Received Jul. 3, 1869, by the U. S. marshal, and on the same day, month, and year served a copy hereof on A. Bonneval, at his office, 22½ Carondelet street, in this city.

S. W. REED, *D'y U. S. Marshal.*

436 THE UNITED STATES OF AMERICA, *District of Louisiana:*

The President of the United States to G. T. Beauregard, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a petiton & order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the Fourth National Bank of the City of New York is plaintiff & appellant, & you & others are defendants, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

E. H. DURELL, *Judge.*

437 (Indorsed:) G. T. Beauregard. United States circuit court. No. 5359. Fourth National Bank of the City of New York vs. New Orleans & Carrolton R. R. Co., G. T. Beauregard, & al. Citation.

Marshal's return.

Received, Jul. 3, 1869, by the U. S. marshal, and on the same day, month, and year served a copy hereof on G. T. Beauregard, pl'tf, at his office, 118 Camp st., New Orleans.

S. W. REED, *D'y U. S. Marshal.*

N. O., July 5, '69.

(Indorsement on record:) No. 278. The Fourth National Bank of the City of New York, appellant, vs. the New Orleans and Carrollton Railroad Company, G. T. Beauregard, Joseph Hernandez, G. W. Binder, and Alexander Bonneval. Louisiana C. C. U. S.

Filed 5th November, 1869.

Supreme Court United States,

THE FOURTH NATIONAL BANK NEW YORK vs. N. O. & CARROLTON RAILROAD COMPANY ET. AL.	December Term, 1870. No. 87.

BRIEF OF P. PHILLIPS.

The complainant filed this bill on 3d December, 1867, to assert its rights under an assignment from Graham, of all his interests in a certain lease made by th[illegible] & C. R. R. to Beauregard, and in the co-partnership tween Beauregard, May and Graham, and and effects of said partnership. This assign in the city of New York on the 8th May recorded in the Parish of Jefferson on t[illegible] 1867. p. 8.

The defendants to the bill are the Carrolton R. R. Company, Beauregard, Hernandez, Binder and Bonneval.

The three last claim to hold by virtue of an assignment made by May of two thirds of the interest, and deny that Graham had any interest in the said copartnership. They thus derive their title,

On the 14th May, 1867, in the city of New Orleans, May conveys to Knox, special agent of the United States, in consideration of his indebtedness to said United States, certain properties estimated at $1,196,779. Included in this description is *his* "interest in the Carrolton Railroad

Supreme Court United States,

THE FOURTH NATIONAL BANK NEW YORK vs. N. O. & CARROLTON RAILROAD COMPANY ET. AL. — December Term, 1870. No. 87.

BRIEF OF P. PHILLIPS.

The complainant filed this bill on 3d December, 1867, to assert its rights under an assignment from Graham, of all his interests in a certain lease made by the N. O. & C. R. R. to Beauregard, and in the co-partnership entered into between Beauregard, May and Graham, and all the property and effects of said partnership. This assignment was made in the city of New York on the 8th May, 1867, and was recorded in the Parish of Jefferson on the 14th of May, 1867. p. 8.

The defendants to the bill are the Carrolton R. R. Company, Beauregard, Hernandez, Binder and Bonneval.

The three last claim to hold by virtue of an assignment made by May of two thirds of the interest, and deny that Graham had any interest in the said copartnership. They thus derive their title,

On the 14th May, 1867, in the city of New Orleans, May conveys to Knox, special agent of the United States, in consideration of his indebtedness to said United States, certain properties estimated at $1,196,779. Included in this description is *his* "interest in the Carrolton Railroad

Company and the property, stock, and appurtenances, valued at $480,000." p. 20.

On the 16th May, 1867, May makes another conveyance to Knox of the property above described; but this he makes not only on his own behalf, but in *behalf of Graham* by virtue of a power of attorney executed by Graham in the city of New York, 29th September, 1866.

Having thus conveyed for himself and Graham, May proceeds to declare "that though it would appear that the said Graham was a *bona fide* owner of one third interest in the said lease, yet in truth and in fact the said May was the owner of the interest which appears in the name of Graham, and the owner with Beauregard in the proportion of two thirds for himself, and one third for Beauregard.

Then follows a clause of warranty, in which May not only binds himself, but "binds the *said A. C. Graham and his heirs to warrant and forever defend the right, title, and interest transferred.*"

The amount of interest thus transferred is estimated at $480,000, and the conveyance is made for the purpose of *securing an individual indebtedness of May* to the United States, "the precise amount of which is to be determined hereafter."

This conveyance is declared to be confirmatory of that of 14th May, 1867, and the special agent Knox, in liquidation of said consideration, "grants an acquittance for so much of said price *as may be received from the United States from the proceeds or sale of said interest.*" p. 22.

On the 21st August, 1867, the property thus acquired by the United States, was conveyed by special agent William Bell to the defendants, Bonneval, Hernandez and Binder for the consideration of $280,000. The interest conveyed

is described as a two-third interest, the same having been "acquired from Thos. P. May and Augustus C. Graham by act of 10th May, 1867." The payments were $100,000 cash, $100,000 in three months, and $80,000 in six months.

Among the covenants is the following: After reciting the assignment by Graham to the Fourth National Bank of the 8th May, 1867, and its subsequent record of the 15th May, it is declared that the United States guarantee the purchasers against the effects thereof, and agree that the note for $80,000 shall not be transferred, nor payment thereof demanded until the said assignment and registration "shall have been annulled, set aside and cancelled." p. 113.

Two months thereafter, to wit: on the 31st October, 1867, an agreement is entered into between Edward Jordan, Solicitor of the Treasury, and Bonneval, Hernandez and Binder, which recites that the conveyance by Bell of 21st August was not authorized, and that the property of the United States did not pass thereby, and that the said Jordan had executed a conveyance to the said parties by deed "bearing even date herewith."

It is stipulated that this *last mentioned deed* in connection with this agreement *shall be accepted in lieu of the act of 21st August*, 1867.

The guarantee against the assignment made by Graham is renewed, but the agreement not to collect the $80,000 note until that assignment was annulled, is cancelled.

On the 15th October, 1867, Bonneval, Hernandez & Binder claiming the two-thirds interest formerly owned by May and Graham together with Beauregard, who still owned the other third, entered into an act of fusion with the N. O. & Carrolton Railroad Company, by which all the assets of the copartnership were merged with those of the Railroad Company, and all the debts of the company

were to be paid by said company. By this act eight thousand shares of stock were issued at $100 per share; and this stock was equally divided between the company of the one part, and Beauregard, Bonneval, Hernandez & Binder on the other part. That is to say, 4000 shares to said Railroad Company, and 4000 shares to the other parties, the defendants to this suit.

Rec., p. 105.

There is no evidence to impeach the *bona fides* of the assignment made by Graham to the complainant on the 8th May, 1867.

There can, therefore, be no denial of the position that if Graham had in truth an interest in the said copartnership, that interest was not conveyed by May by the deed of the 16th May, 1867, so as to bind Graham much less the complainant who held by assignment *nine days previously.*

May had conveyed his own interest in the copartnership on the 14th May. The assignment to the complainant, which was *recorded on the 15th May*, gave rise to the necessity for another conveyance.

May is therefore induced on the day following to convey *Graham's interest* as well as his own.

This conveyance is stated on its face to be made as security for a *debt due by May.* As Graham had no interest in this payment, the power of attorney given to May, did not authorize the conveyance.

The power is technically drawn and must receive a strict construction. However general the language it is expressly declared that the acts to be done were not only to be transacted in his *name* but in *his behalf.*

Such a power did not authorize May to sell his princi-

pal's property in discharge of his own debts. His doing so was a fraud upon his principal, and it is equally fraudulent in the purchaser who was cognizant of the transaction.

Holton vs. Smith, 7 N. Hamp., 446.
Kingsly vs. State Bank, 3 Yerger, 107.
Stamback vs. Bank Va., 11 Gratt., 269.
Billings vs. Morrow, 7 Calf., 174.
Wallace vs. Branch Bank, 1 Ala., 565.
Hodge vs. Coombs, 1 Black., 192.

No where is the rule more stringently applied than in the State of Louisiana where the power was to be exercised.

Civil Code, § 2965, 2966.
Cuney vs. Roberts, 16 Loui., 175.
Copey vs. Flint, 6 Rob., 56.
Gales vs. Bell, 3 An., 62
Reynolds vs. Rowley, 4 An., 396.

Nor can title be derived through May exercising the power to convey by value of his relation as partner, for his conveyance of partnership assets in payment of his own debts was a fraud, out of which no rights could arise.

Rogers v. Batchelor, 12 Pet., 230.

Besides this, at the time of the conveyance it was known to both parties that Graham had conveyed his interest to the complainant. If the power of attorney had conferred on May the authority to make a conveyance, this action of Graham would be a revocation of the authority pro hac vice.

It was the knowledge of this action of Graham which induced the restriction that May was only to be discharged

from so "much of said price *as may be secured from the proceeds of the sale of the interests conveyed.*"

The United States parted with nothing by this arrangement. If anything was made out of the assigned effects then, to that extent, May's debt was to be extinguished. If nothing was realized, then the relations of the party stood as they did before the agreement was made.

But if Graham was in truth a partner, and if it be admitted that the power of attorney to May authorized a conveyance of his interest to secure May's debts, still May's assignment as attorney for Graham could not certainly be more effective than if it had been made by Graham in person, and if Graham had assigned to the agent of the United States on the 16th of May, this could not have defeated his assignment to the complainant of the same interest made on the 8th May.

As between assignments the rule would be applied "qui prior est tempore potior est jure." Equity in such cases will give no preference, and they will be payable according to their respective priority of date.

Broome's Leg. Max., p. 264.

As the contract of partnership is founded on personal confidence, the voluntary or involuntary transfer of a partner's interest to a stranger necessarily dissolves the partnership.

Civil Code, Art. 2794.
Tyler's Créditors, 9 Rob., 372.
Cochran v. Perry, 5 Watts & Sargt., 266.
Marquand, N. Y. Co., 17 John, 525.
Mumford v. McKay, 8 Wend., 442.

Graham having assigned his interest to complainant,

and May his interest to Hernandez, Binder & Bonneval. the bill was well filed against the latter, and Beauregard, one of the original partners, to have an account of the profits of the concern under the prayer for general relief.

Story's Eq. Plea., § 40, 41.

As the assignment by Graham to complainant was absolute, Graham was not a necessary party. This, especially as to have made him a defendant, being a citizen of the same State with the complainant, would have ousted the jurisdiction.

Story's Eq. Plea, §78, 79, 153.
Rogers v. Ins. Com, C. Paige, 598.
Canal Co. v. Gordon, 6 Wall. 569.
Fitch v. Creighton, 24 Howd., 163.
Rule in Equity, No. 47.

Hernandez, Binder & Bonneval "admit that they have been put in possession of the entire interest originally held both by Graham & May in the lease and in the contract (partnership) aforesaid, and in the business carried on in pursuance thereof, and they aver and maintain that they are the rightful owners of the same." p. 16.

The decree dismissed the bill with leave to complainant to institute a suit against Beauregard, May & Graham for a settlement of whatever partnership existed between them prior to the transfer by May on the 14th and 16th May 1867.

This is palpably erroneous, as through May, Bonneval, Binder & Hernandez had come into the possession and control of the partnership effects. The real defendants are thus protected from a suit., and parties who have divested themselves of all possession and interest are to be substituted as defendants in an equity proceeding which deals always with those who have the real interest.

But admit that May & Graham were necessary parties, their absence did not deprive the Court of jurisdiction over the cause. The objection could only be urged against granting the relief sought without bringing them in. When such an objection is made and sustained, it does not warrant an absolute dismissal of the bill as to those properly before the Court. In such a case an amendment of the bill will be ordered.

Harrow v. Rowan, 4 Washg, C. C. R. 202.
West v. Randal, 2 Mason, 181.
Cameal v. Banks, 10 Wheat, 181.
Milligan v. Millege, 3 Cranch, 220.

As to the time and mode of raising this objection this Court has held that, " when a complainant omits to bring before the Court persons who are necessary parties, and the objection does not appear on the face of the bill, the proper mode is to take advantage of it by plea or answer. If the objection appears on face of the bill by demurrer. It is too late to urge a formal objection of this kind at the hearing. We may (say the Court) crowd this opinion with decisions to same point from the English and American Chancery Reports.

Story and Livingston, 13 Pet., 375.
52 Rule Eq. Prac.

The main ground relied on by the defendants is the allegation that in point of fact Graham never had any interest in the said partnership, but that his apparent interest belonged to May, who was really two-thirds interested and Beauregard one-third.

We have to sustain Graham's interest—

1. The contract of lease of 12th May, 1866, made before a Notary, in which Graham intervenes with May, and

both bind themselves and their heirs in solido for the payment by Beauregard, the lessee, of the rent of the road for 25 years.

2. The articles of co-partnership of 18th April, 1866, also executed by Graham in person, in which it is declared that it is entered into for the mutual benefit of the three partners, and that the profits shall be equally divided between the three, share and share alike.

After providing for the payments to be made by each, it is stipulated that in case of the death of either, the partnership shall continue between the surviving partners and the heirs and assigns of the deceased.

3 Conveyance before Notary, 30th April, 1866, by S. A. Kohn to Beauregard, May and Graham, "here present, and accepting for themselves, their heirs and assigns, in the proportion of one-third each," a square of ground bounded by Nyades, Appollo, and Berlin, for the sum of $8,000, $2000 being paid in cash and the remainder in two promisory notes signed by Graham, with the others, in one and two years. 90.

5. Conveyance before Notary, 29th June 1866, by G. C. Duncan to Beauregard, lessee, represented by his attorney, in fact May, of a triangle of ground bounded by Levee street, Carrolton avenue and First street, for $26,000. Of this sum $8,666 66 paid in cash, and for the remainder May signed two notes in the name of Beauregard, which notes were endorsed by May and Graham in one and two years. 92.

6. Conveyance before Notary, 15th January, 1867, by G. C. Duncan to Beauregard, purchasing, as lessee, square bounded by St. Charles, Felicity, Appollo and Polymni streets, for $26,000, cash $8,666 66, the remainder in four notes, endorsed by May. 94.

4. Conveyance before Notary, 5th May, 1866, W. C. Raymond to Beauregard, May and Graham, "here present, and accepting" and purchasing for themselves, their heirs and assigns, in the proportion of individual third each, square of ground in Jefferson Parish, bounded by Napoleon avenue, Berlin, Nayardes and Appollo streets, for $12,500, cash $4,160 66, the remainder in two notes in one and two years, subscribed and endorsed by the said parties. 96.

All of the above property is claimed by the defendants, Bonneval, Binder and Hernandez, to have been vested in them by virtue of the assignment of 16th May, 1867, as the partnership property.

Graham was President of the First National Bank of New Orleans until the fall of 1866, when he removed to New York, and then May became President. p. 83.

The conveyances of 30th April, 5th May and 29th June, 1866, made while Graham was President, show on their face that he was present, that he executed the contracts, made his portion of the cash payments, and signed and endorsed the notes for his portion of the credit. After he left, the conveyance of 15th January, 1867, was made to May alone.

All these solemn acts and admissions are now sought to be overthrown by the parol declarations of a single witness who is the most deeply interested in sustaining those declarations.

On the 4th January, 1869, May was interrogated under a commission, taken out by defendant, as to the interest of Graham in the partnership. He then declined to answer any one of the interrogatories on the ground that his testimony might prejudice him on the trial of an indictment by the United States then pending against him. 60.

On the 6th April, 1869, he was again interrogated. All that he says on this subject is: "It was understood between Mr. Graham and myself that the whole property was my own, and that I was to deal with it as I pleased." This was objected to as incompetent.

Again he states: "Whatever amount was to be furnished by May and Graham was actually furnished by me, *but not all in my name.* But they were all my own means that were furnished. p. 82.

A commission to examine Graham was sued out by complainant on 30th June, 1868, the defendants filed no cross-interrogatories. Graham then swore that he was "the bona fide owner of the interest which he had transferred to the complainant. p. 30.

Graham was then examined in *chief by defendants* under a commission dated 24th July, 1868. But one question was propounded: "State whether the interest standing in your name in the New Orleans and Carrolton Railroad Company, at the time it was conveyed by you to the Fourth National Bank New York, was not really belonging to Thomas P. May—whether you paid any portion of the monies to entitle you to said interest—and from what funds the monies were drawn to make the payment?" 57.

Answer. The interest belonged to me and not to Thos. P. May. I did pay the monies that entitled me to said interest. The monies so paid were my own private funds." p. 39.

On the 3d July, 1868, P. H. Morgan, Esq., District Attorney of the United States, filed an affidavit that the Court had allowed his predecessor to represent the defendants; that in his opinion the case, in its present condition, was not ready for trial, and that he expects to prove by Graham that the property transferred by May had al-

ways been his, May's proporty, and that this was known to the Fourth National Bank when Graham assigned to it, wherefore he prays for a commission to examine Graham. P. 63.

This prayer was granted and Graham was again examin chief by defendants on the 10th March, 1869. Graham again distinctly swears that his interest as represented in the partnership was *bona fide*. To prove payment on said articles of partnership, he exhibits four checks drawn on the First National Bank which were paid by said Bank and charged to his account.

4th May, 1866	$20,000
8th May, 1866	30,000
9th June, 1866	20,000
10th July, 1866	20,000
In addition to this, May as his attorney had drawn other checks and drafts for about	50,000

He denies that he has any money or other property belonging to May, or that he is indebted to the said First National Bank, having on a settlement of its claims and demands joined with his brother Malcolm Graham in giving to the Receiver of said Bank four notes amounting in the aggregate to $19,000. p. 67.

The defendants thus possessed of the evidence of Graham, in violation of all rules of chancery practice are allowed to re-examine May for the third time. This was done against the protestation of complainant at 25 minutes after 10, the case being fixed for trial at 11 o'clock same day, to wit: the 6th April, 1869. p. 88.

He is asked in reference to the checks testified to by Graham, drawn on the First National Bank, how they came to be drawn and out of whose funds they were paid?

He answers "I cannot remember the identical checks, nor any special amounts. I can only claim that the interest which stood in Mr. Graham's name was mine. Mr. Graham had means of mine in his hands in 1866 when it is claimed these payments were made. It was the understanding between us that the payments made by him on account of the lease should be paid out of my means in his hands. He had a single Bank account and *some portions of that account were his own means*, the bulk of the account was my means. Accounts were rendered monthly to Beauregard, Graham, and myself as to the condition of the road.

The reason why Grahams name was introduced was to give me full control in case of any difficulty with Beauregard or his heirs.

On cross-examination he testifies that Graham had a deposit account with the Bank; that all the checks drawn by or for him were charged to that account, that commercial accounts were balanced in the Bank monthly. When asked who settled the balances of Graham's account, he replies he *does not remember.*

When asked if Graham was not liable to pay his visible share of the balance due the Bank by Beauregard as lessee he answers that since the close of the bank he supposes he *might now be made liable.*

Question. How was it possible to make Graham liable for that debt if he had no interest whatever in the railroad?

Answer. Just as I might be liable on an appeal bond for a friend and because he had signed the articles of partnership.

It is proved by Meigs, Cashier, and Helm, the Bookkeeper of the Bank, that the checks referred to by Graham, were charged to Graham's account and credited to Beauregard as lessee. pp. 73, 75.

On this evidence which is all that is to be found on the Record, it is confidently submitted that if the suit was between Graham and May, the former would be entitled to a decree.

How much stronger is the case as it stands between the present litigants. Graham, who is represented in the articles of co-partnership and in all the conveyances, as having a valid interest, assigns that interest to the complainant *whose bona fides is not attempted to be disputed.*

The consideration of this assignment is shown by Mr. Calhoun the cashier of the Fourth National Bank. "The real object to be accomplished by the conveyance was to secure the Bank the payment of certain Drafts made by the First National Bank, New Orleans, on the said Fourth National Bank, and *payment of which was refused until Mr. Graham secured it by the said conveyance.* It was a genuine conveyance for a valid consideration made to secure the Bank as above stated."

"Mr. Graham was not indebted to the Fourth National Bank on his own account, but he had previously guaranteed it against all over drafts by the First National Bank of New Orleans." p. 37.

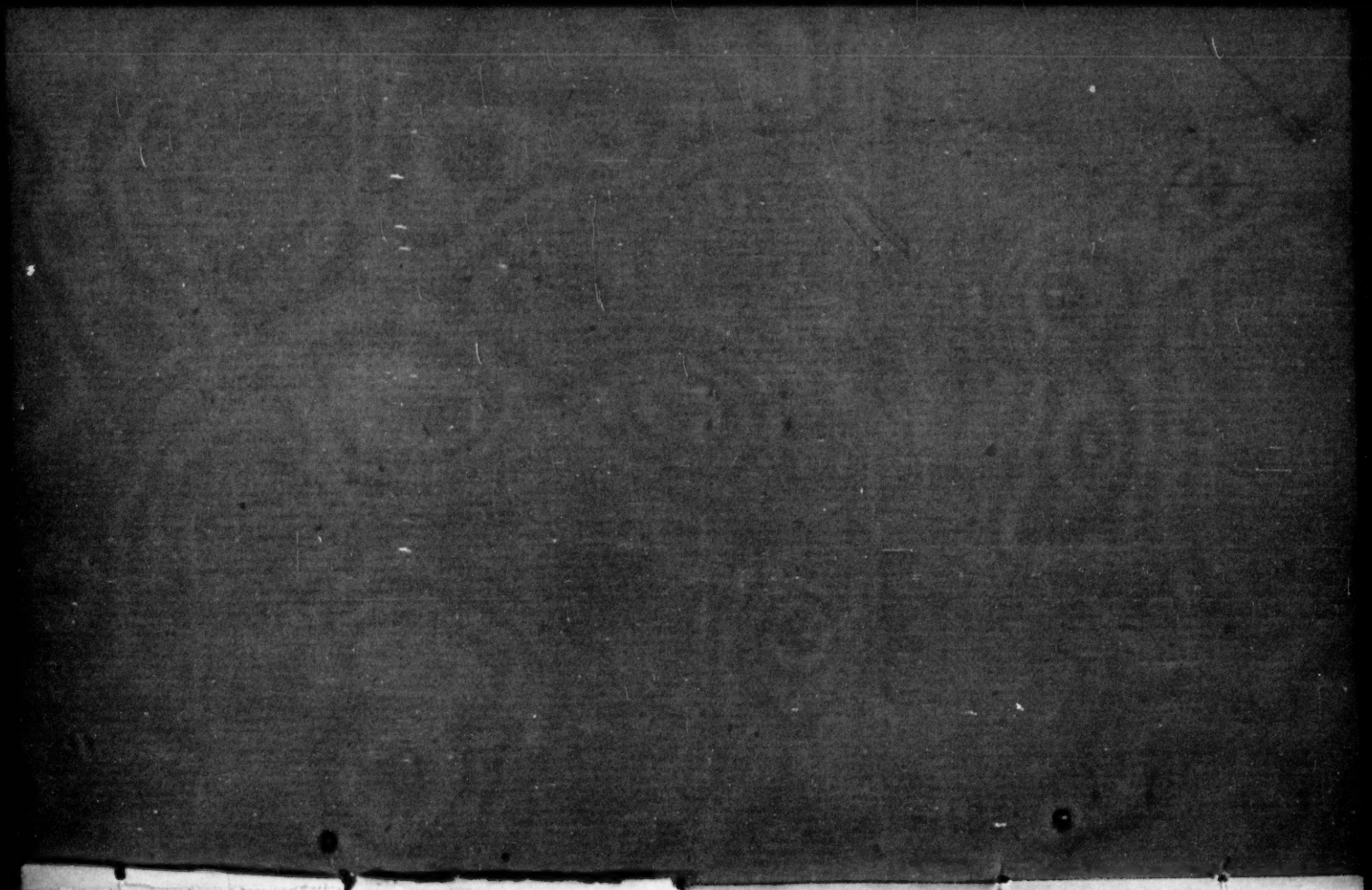
The complainant therefore occupies the position of a *bona fide* purchaser without notice, and in a litigation directly with May, it would not be tolerated that such evidence as is now offered by him, should be received to defeat the complainant's rights.

The present defendant's occupy no better position; when

they purchased it was with full knowledge of the assignment to the complainant as shown by the express terms of the conveyance under which they hold. Nor can they rely upon the want of notice in their grantor, for when the conveyance was made to Knox on 16th May, 1867, as agent of the United States, it was made apparent on the face of the instrument, that May was conveying away Graham's interest, to secure his own indebtedness, and this was done under a power of attorney, which, though extensive in its authority, was confined to acts to be done *for* Graham and in *his behalf*. 98.

It was doubtless this defect which rendered the stipulation that May should receive no discharge from his indebtedness, except for such amount as might be collected from the interest conveyed.

P. PHILLIPS,
Of Counsel for Appellants.



IN THE SUPREME COURT
Of the United States.

THE FOURTH NATIONAL BANK OF NEW YORK,
APPELLANTS,

v.

NEW ORLEANS AND CARROLLTON RAILROAD, COMPANY, G. T. BEAUREGARD, AND OTHERS,
APPELLEES.

This is an appeal by the plaintiffs from a decree in chancery dismissing their bill, in Circuit Court of the United States for Louisiana. The New Orleans and Carrollton Railroad Company, is the name of a corporation in Louisiana, which had constructed a railroad from New Orleans to Carrollton, a distance of some six or eight miles. On the 12th April, 1866, this corporation made a lease to the defendant, Beauregard, of the railroad. tract and its appurtenances, for twenty-five years from the 16th of that month, at a *stipulated rent* of $20,000 per annum, and increasing each year $500 with the privilege to convert the road into a city horse-railroad, and under covenants to make large improvements and changes in its condition and operation. Thomas P. May and A. C. Graham signed the lease as guarantors or sureties for Beauregard, the lessor. R. p. 3, 4, 5, 6. Some two days after the execution of this lease 18th April, to Beauregard, Beauregard, Thosmas P. May, and A. C. Graham entered into articles of agreement for the equipment of this road for their mutual advantage.

Bauregard is to have $5000 for his services in procuring the lease, and for his management and direction of the under-

taking in his name, but for the common benefit. The condition was to continue for twenty-five years. The whole amount of the money necessary to carry out the enterprise was to be furnished by May and Graham—$20,000 by each immediately after the lease was obtained, and $20,000 by each every month after, for four months, and then $10,000 each, per month. Rec. 7, 8. In immediate connection with these articles for a partnership, it is proper to consider the 18th article of the lease from the Company to Beauregard, dated the 12th April, before referred. That article is "*The said lessee*, (*Beauregard*) *shall not* have the right of transferring this lease, or of underletting the property presently leased premises, without the written consent of the Board of Directors of the said New Orleans and Carrollton Railroad Company."

On the 8th May, 1867, A. C. Graham, upon the consideration of one dollar assigns all of his estate, right and title, to the indenture of lease made by the Railroad Company, aforesaid, dated the 12th April, 1866, which he derived from the partnership articles. All of his right in any property of the partnership, and all his claims against either partner to the *plaintiff* in this suit. R. 8, 9.

The bill of the plaintiff is framed to enforce this transfer. The bill charges that the defendants have taken possession of the lease and partnership, and do not recognize the partnership or the interest of the plaintiff.

That they claim under the defendant, May, and claim independently of the plaintiff.

The prayer of the bill is that the defendants be ordered to recognize the interest of the said plaintiff in the copartnership, and in the business carried on under said lease, and to pay the capital advanced by said Graham, and his share of profits. R. 2, 3.

The facts to be noticed in connection with the bill are the stipulations we have quoted from the lease that the lease should not be assigned.

2d. That neither May nor Graham, the *partners*, are *parties* to this bill.

The defendant, Beauregard, took possession of the road and conducted and managed it until after the month of May, 1867,

under his lease, and in connection with May and Graham. He made to them monthly statements, and made his deposits in the First National Bank of New Orleans. The assignment of Graham bears the date in New York 8th May, 1867, and was registered the 15th May, 1867. R. 9. On the 14th May, 1867, May transferred his interest to the United States in and to the Carrollton Railroad property, stock etc., at the sum of $480,000; R. 20, and on the 16th May, 1867, he, for himself, and as attorney in fact of Graham, in which he states that the entire interest in the property is his; that Graham had no interest, and he afterwards testifies that Graham made no psyment of any portion of the consideration money specified in the articles signed, Beauregard, May and Graham, of the 18th April, 1866, before referred to. The testimony compels us to look a little farther into the connection between these parties. May had been Assistant Treasurer of the United States, and on the 14th May, 1867, acknowledged an indebtedness to the United States, for which he conveyed property, at his own estimate of near $1,200,000. Among the property thus conveyed were 1410 shares of the stock of the First National Bank in New Orleans. Graham in 1866 was the President of that bank, and May was a director in the bank, and both were stockholders. May, as we see, was the controlling stockholder.

During the year 1866 Graham went to New York and became the agent of the bank there. May became President at New Orleans. By the contract with Beauregard there was to be paid $300,000 to establish the road in the space of twelve months by these parties. The payments were made by giving a credit to Beauregard on the books of the bank. The account was kept in the name of Beauregard, lessee. The account of Beauregard from the 20th April, 1866, till the 11th May, 1867, the last day of life of the First National Bank, is in evidence. Record 75, 81. The fact appears at the foot of account that on the 11th *May*, 1867, there was an *overdraft* of $72,008 88. But on examination of the account in connection with the testimony of Meigs, the bank clerk, we shall have other facts to show what payments were made by these parties. The 15th September, 1867, a note of Beauregard was made by May for $40,000. This was to cover an overdraft.

Beauregard repudiated the note, and it is now held by the bank. The same witness proves that on the 19th March, 1867, Beauregard's account, as lessee, was overdrawn $122,219 97. The draft of May on Graham for $125,000 was called money, and that sum was placed as money to the credit of the account. This, Meigs says, was intended to conceal the overdrawn condition of the accounts from an examiner of the Treasury Department appointed to examine the books and property of the bank. It appears from this exposure that the note of Beauregard and the draft of May on Graham, copies of which appear on pages 75 and 76, represents sums drawn from the bank to cover the checks of the lessee. To this must be added the $72000 upon the final balance, for which there is no voucher but checks paid. The pillage of the First National Bank in their accounts is plainly $237,008. The moneys earned by the road were deposited daily. The sums to be paid under the articles were payable in monthly installments of $20,000 by each party, commencing with the signature of the lease. The sum of $200,000 was to be paid in four months, by the two.

There was a deposit of $20,000 on the the 16th April, 1866. 4th May, 9th June, 10th July. On the 15th September, Beauregard's note was taken to cover overdraft, and is counted as $40,000. On the 23d Oct. there was a deposit of $240,000. Deposits then ceased. The most that can be counted as deposits are $120,000. The remainder fraudulent overdrafts.

Graham, says he paid these moneys out of his own funds. R. 39. Subsequently he was again examined.

There is in his testimony statements, that are contradicted. His own private account was overdrawn $7,214 79. He says that he owed nothing. He sends a copy of a check for $30,000, as a payment made to the lessee of the Railroad, but no check of that date, or amount appears in the accounts of the *lessee*, or as having been paid to and deposited by *Beauregard*.

Beauregard states that his deposits were all made in the bank, and that all the funds that came to his hands for the carrying on the business were deposited. *May* was examined on the same subject. R. 82, 87. He exhibits a plenary power from Graham to act for him for every purpose whatever. He states that all of the money furnished to Beauregard in the

name of Graham, was furnished by himself, though not all in his name. Beauregard and May concur in the statement that Graham had no participation or concern in making any arrangement for the road. Beauregard says, he looked to May, not to Graham, and May says he had no intercourse concerning the business of the road except with Beauregard.

May says: "The understanding between Graham and myself was that the payments made by him on account of this lease should be paid out of my means in his hands. I remember drawing checks in Graham's name as his attorney. If such checks were drawn for the railroad they were paid with my funds The bulk of Mr. Graham's bank account was my means. It certainly did not apply $50,000 of Graham's road means in payments on this road. His pecuniary condition, as far I knew, was of a limited character. He simply had his salary as President of the bank."

He says he knew his situation thoroughly. Record 87. Now we know where May's treasury was. The indebtedness to the United States, and the fact that he had but lately been an Assistant Treasurer, shows why he should use the name of Graham, and should cover over his road transaction by simulated papers. Where did Graham get the ability to pay $20,000 a month for four months. After making a cash payment of that sum? Where did he find means to pay any portion of the sum? May furnishes the answer. Graham says: "There is an unsettled account between myself and May, embracing many transactions, and which accounts cannot be closed until said May gives a statement of his action under my power of attorney to him, and my belief is that I owe him nothing, R. 67. This is an evasive answer to the 7th interrogatory.

The statements of May are corroborated by Graham's conduct. We find that he takes no concern in the enterprise.

During the summer of 1866, (from beginning of May till October,) Beauregard was absent from New Orleans, and Thomas P. May was in charge of the Carrollton road.

During that period both May and Graham were in New Orleans. During that period Graham pretended that there was paid by him four checks, copies of which he attaches to his deposition. The first check for $20,000, dated 4th May,

seems to have been deposited on that day. The second check for $30,000, does not appear in the accounts of the lessee, nor is there any deposit till the 9th June of more than the daily deposits from the earnings of the road. There is a deposit on the 10th July corresponding to the check of that date.

These three checks, of $20,000, each are all that Graham can account for. The checks are his only vouchers. The question is, when did Graham get money to make payments? Graham was placed in the bank by May. May had the command of the bank through his ownership of 1410 shares of the stock. He was Assistant Treasurer of the United States, and Director of the bank. It fully appears that May was a most unwilling witness. On page 60 of the Record he attempted to shelter himself from inquiry and examination altogether by manifesting his apprehension that he would criminate himself, and furnish testimony against himself upon pending indictments. The matter was brought before the Circuit Court, and by its order he was forced to answer. He was required to explain the paymants on account of the Railroad between April and October, 1866. May, in his answers, contradicts Graham. He says he knew Graham's affairs thoroughly; that his resources consisted of his salary in the bank. He says: "Mr. Graham had means of mine in his hands in 1866, when it is claimed he made these payments on account of the lease. The understanding between Graham and myself was that the payments made by him on account of this lease should be paid out of my means in his hands. I remember drawing checks as his per pro. I have no doubt that some of them were for the Corrollton Railroad. If such checks were drawn, they paid with my means. * * * * He had a single bank account, and some portions of that account were his own means. * * * I certainly did not apply $50,000 of Graham's real means in payments on this road; I may have applied his nominal means; in fact I applied more than that of his nominal means. I was intimate with Graham, and knew his pecuniary condition thoroughly. His pecuniary condition, as far as I know, was of a limited character; he simply had his salary as President of the bank."

Recurring to exhibit No. 2, p. 20, we shall probably have a clue to the distinction between nominal means and real means, and the fountains from which each came. We learn from that paper that *May* lived in a house estimated at $50,000; that he had 1410 shares of stock in the First National Bank; that he had a plantation standing in the name of A. C. Graham known as the Payne plantation, $44,000; that he held interests in the Carrollton Railroad Company; owned a steamboat and had J. O. Nixon's promissory note, and finally, we learn from the record, that he was indebted to the United States to an enormous sum, and became liable to a criminal prosecution because of it.

The facts submitted from the books of the First National Bank, of which May and Graham were successively the President, and in whose direction or management both were concerned from its organization, show that during the years 1866–7, commencing with the partnership in April, 1866, and terminating with the failure of the bank in the month of *May*, that these parties who were to supply money, employed without any sense of responsibility the money of the bank as if it were their own. At one time an overdraft is covered with a note drawn in Beauregard's name; at another time by a draft of May on Graham, neither of which were collected or sought to be collected. The nominal deposits to the credit of Beauregard, lessee, are $467,318. His checks are for $539,327.

But of the deposits, the note of Beauregard and the draft of May on Graham was actually deposited and money taken from the bank, there were daily deposits for the receipts of the road; and the only obscurity about the matter is to find whence the $120,000 that appear in accounts was embezzled; for May tells us that Graham had nothing with which to make deposits, and May's assignment to the United States shows that the money he called his, was in fact, the money he could not have obtained in any lawful or proper manner.

The bill in this case has the appearance of a bill to settle accounts between two partners engaged in partnership to plunder the government and the bank, in which they held posts of power and of trust. On the face of the case it was manifest to the court that there could be no decree among these parties

unless the bill contemplated a settlement of the partnership accounts, and the ascertainment of the respective balance.

What were the relations of these parties—Beauregard, Graham, May, on the 16th May, 1867?

The partnership no longer existed. May had assigned all of his rights, among which he claims the interests, nominally Graham's, to the United States. He had no interest at all, and was notoriously insolvent.

Graham on the 8th May, 1867, in New York, assuming to have an interest, assigned that to the plaintiff in the suit. All his claims in the *corpus* of the partnership, and of his balances on a settlement, among them he put out of his hands.

Beauregard, the manager of a road that had been maintained at an expense of above $1250 per diem, from the date of partnership, and was then in debt to the National Bank on overdrafts, was left without partners or supports. There were no moneys for him to pay the rents, or to pay these debts.

What could either one of these persons, May and Graham, assign?

They might assign whatever remained after the adjustment of the partnership accounts? May had no power to assign a right in any separate item of property, as a claim for any special payment he had made, and neither could assign any right to a stranger to be a partner.

Baker's appeals, 9 Harris, Pa. R. 76.
Rodreguez, *v.* Heffernon, 5, J. ch. R. 417.
4 Vesey, Jr., 396. 4 John ch. R. 522.
Marquand, *v.* Johnson. 17 John, 525.
18 Louisiana, 283; 8 Watts and Sevg., 262.

In a suit involving the settlement of the accounts, the several partners were indispensible parties. In this case we are making inquiries affecting the rights, interest and acts of Beauregard, May and Graham, without the presence of either, in their proper positions as partners, and May and Graham are not in any manner, parties to the bill itself, and only appear as witnesses.

The case as regards Graham, assumes another peculiar phase, when we consider the fact that the plaintiff his assignee is but a mortgagee or pledgee of this interest,

A connection with Beauregard and May, entails the liquidation of a partnership, and the payment of sums that Graham has stipulated to pay, and on his own statement it appears, have not been paid.

There is nothing in the bill to show that the plaintiff have either the ability or the disposition to do this, the plaintiff has not offered to do this.

But it is quite certain that the bank cannot come into the partnership without the consent of other parties, and that the assignment of the residuary interest does not give to the assignee a title to any particular portion of the partnership property.

But other facts appear in the case of importance to this discussion. One year's experience had shown that the railroad was not profitable as then organized. In april, 1867, before the exposure of the management of the affairs of the National Bank, and of Graham's and May's condition, an act had passed the Legislature of the State for a reconstitution or organization of the New Orleans and Carrollton Railroad Company. The plan of settlement was that Beauregard should surrender his lease to the corporation. What was to hinder him from doing so, in so far as the corporation was concerned? The corporation had not consented to the transfer of the lease to May or to Graham, and were entitled to disavow the assignment at their pleasure. This reorganization or fusion was completed the 15th October, 1867, by a notarial act which is contained in the record at page 366. The first, second and third sections of the act of fusion contain a provision for the cancellation of the lease for Beauregard, and certain amounts by a purchase from the United States of May's interest as described by himself. We reaffirm, that the cancellation of of that lease by Beauregard absolves the New Orleans and Carrollton Railroad Company.

The courts of Louisiana admit the validity of such a stipulation in the lease, as is contained in the lease to Beauregard, and will enforce it. 4 Louisiana Ann., 40; 8 Louisiana Ann., 399. No evidence exists in the record which shows that the Carrollton Railroad Company asssented to any interest being held by either Graham or May. The lease removed an independent contract between the Carrollton Railroad Company

and Beauregard, and Beauregard appeared ostensibly as the owner of the property. The accounts of the bank show that Beauregard appeared as the only lessee. The Carrollton Railroad Company have no relations with Graham or with May.

The case of Bonneval Bender and Hernandez who claim under the United States, and May to a share, cannot be determined until May and Graham have their settlement, and the firm of Beauregard, May and Graham have their settlement.

Notwithstanding the absolute terms of transfer that are found in the assignment of Graham to the plaintiff, it amounts only to a transfer of the interest of Graham in the partnership of Brauregard, May and Graham, after a final settlement. There was no interest in any specific property of the firm that Graham could transfer. Nor can the plaintiffs claim for such an interest. The proofs show a most discreditable condition in the financial arrangements of the members of the firm, May & Graham. The Circuit Court, therefore, determined that the suit could not be *supported in its existing plight or condition*, but dismissed the bill without prejudice to the rights of the parties against the partnership of Beauregard, May and Graham.

The plaintiff can claim nothing under the assignment of the lease, for the lease was only a portion of the partnership property, and its conditions imply the existence and continuance of a partnership which was dissolved by the act of assignment.

It is clear that Graham had no intention of continuing his connection with the firm, nor did May. The bill is formed with no purpose, to settle the affairs of that firm, nor with any, to carry on the relations that existed at the time of the assignment.

Respectfully submitted,

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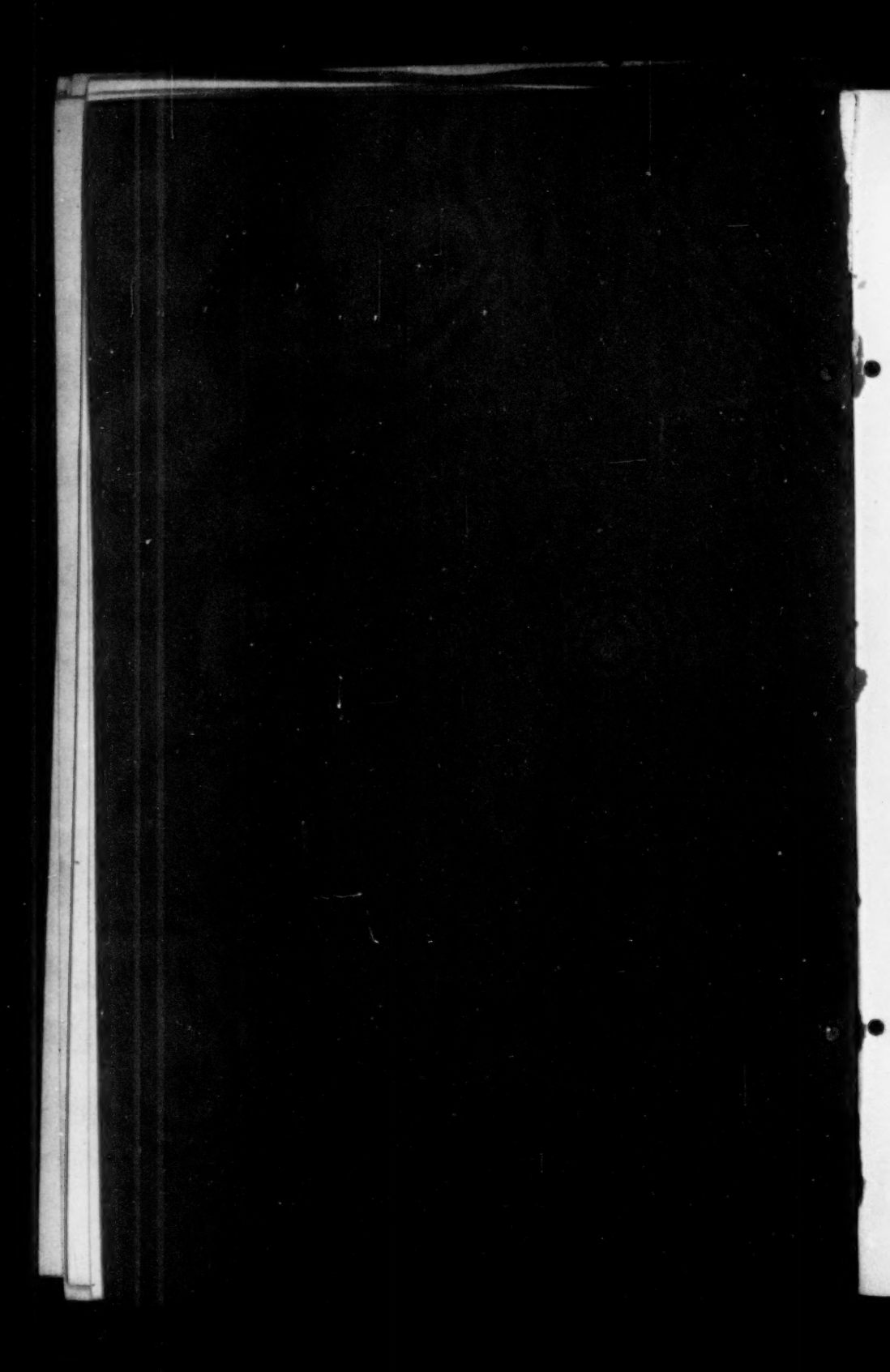
In the Supreme Court of the United States

DECEMBER TERM, 1869.

THE FOURTH NATIONAL BANK OF THE CITY OF NEW YORK, *Appellant*
vs.
THE NEW ORLEANS AND CARROLTON RAILROAD CO., G. T. BEAUREGARD, JOSEPH HERNANDEZ, G. W. BINDER, and ALEX. BONNEVAL. } No. 278.

Appeal from the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR THE UNITED STATES.



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[Submitted in behalf of the appellees, Hernandez, Binder, and Bonneval, whose interests are derived from the United States with a guarantee of protection from the latter.]

This is an appeal from a decree of the circuit court of the United States for the district of Louisiana, dismissing a bill in chancery filed by the complainant there, who is the appellant here, on the 3d of December, 1867, the declared object of which bill was, to enforce a recognition by the defendants below, who are the appellees here, of the interest claimed by the complainant in a certain copartnership, and in the business

carried on under a certain lease hereinafter mentioned, and furthermore to compel the defendants to render an account of the copartnership, and to pay to the complainant the amount of capital, and interest thereon, alleged to have been advanced to the copartnership by one A. C. Graham, together with one-third of the profits made in said business, and also such other and further relief in the premises as the nature of the case required.

It appears, that on the 12th of April, 1866, one of the defendants, the New Orleans and Carrolton Railroad Company, a corporation of the State of Louisiana, leased to G. T. Beauregard, another of the defendants, the railway track belonging to the former, and its appurtenances, for the term of 25 years, at a rental of $20,000 per annum, to be increased $500 each year, with the privilege of converting the road into a horse-car railway, &c. Among other provisions, the lease contained the following: "The said lessee shall not have the right of transferring this lease, or of underletting the presently leased premises, without the written consent of the board of directors of the said New Orleans and Carrolton Railroad Company." Thomas P. May and the said A. C. Graham signed the lease as sureties for the faithful compliance on the part of Beauregard with all the clauses, conditions, and stipulations therein contained, and for the punctual payment of the whole of the rents specified therein. (Record, pp. 3 to 6.)

About a month prior to the execution of the lease,

viz., on the 11th of March, 1866, a co-partnership had been entered into by Beauregard and May, for the purpose of leasing the said railway, and by written articles of that date it was agreed between them that Beauregard should obtain the lease of the road in his name, and take charge of, manage, and direct the undertaking, at an annual salary of $5,000; that the amount of money to carry out the enterprise, not exceeding $150,000, should be furnished by May, who was to be reimbursed, capital and interest at the rate of eight per cent. per annum, from the annual net profits of the enterprise, after which the future annual net profits were to be equally divided between the two parties; and that the said sum of $150,000 should be paid to Beauregard by instalments, according to a scheme therein set forth. (Record, p. 89.)

Afterwards, it seems, Graham was taken into co-partnership with them, and on the 18th of April, 1866, a few days after the execution of the lease, new articles were drawn up and signed by the three parties, May, Graham, and Beauregard. These articles provided that Beauregard should obtain, in his name, but for the joint account of the three parties mentioned, the lease of the "New Orleans and Carrolton Railroad," and take charge, conduct, manage, and direct the undertaking at the annual salary aforesaid; and that May and Graham should furnish the amount of capital necessary for the enterprise, not to exceed $150,000 from each, with similar provisions for reimbursement of the capital

thus advanced, and for division of the net profits, as in the previous articles of copartnership between Beauregard and May; all losses, by bad debts or otherwise, to be paid and borne equally by the three parties. The 8th article also contained this provision, that, "in case any of the said copartners shall happen to decease before the expiration of the said 25 years, the present copartnership shall continue between the surviving copartners and the heirs or assigns of the deceased, under the same charges, clauses, and conditions, as above set forth." (Record, pp. 7 and 8.)

On the 14th of May, 1867, the said May, who at that time was, or had then recently been, Assistant Treasurer of the United States at New Orleans, and who was a defaulter to the Government for above a million of dollars, in partial satisfaction of his indebtedness, assigned to the United States, represented in that behalf by a special agent, all his interest in and to the said railroad, and the property, stock, and appurtenances thereto belonging. (Record, pp. 20 and 21.)

And on the 16th of May, 1867, he executed a second assignment to the United States, both for himself and as attorney-in-fact of the said Graham, conveying his own and also Graham's interest in and to the said railroad, &c.; declaring, however, in the instrument of assignment, that although it would appear from the premises that Graham was a *bona fide* owner of one-third part and interest in the lease of said railroad and appurtenances, "yet, in truth and in fact, he, the said

May, was the owner of the interest therein which appears in the name of the said Graham, and the owner, with the said Beauregard, of the whole of the said lease and appurtenances, in the proportions of two-thirds part and interest for himself, and of one-third part and interest for the said Beauregard." (Record, pp. 22 and 23.) The power of attorney from Graham to May, referred to by the latter in this assignment, is a general one, and purports to have been executed by Graham in the city of New York on the 29th of September, 1866. (Record, pp. 98 and 99.)

But it appears that, on the 8th of May, 1867, prior to the last-mentioned assignment, Graham executed an assignment in the city of New York in favor of the Fourth National Bank of that city, the complainant below and appellant here, transferring all his interest in the said lease and in the property and effects of the partnership between Beauregard, May, and himself, and also all debts due to him from the said copartnership or any other member thereof. This instrument was registered in the Recorder's office for Jefferson parish, La., on the 15th of May, 1867. (Record, pp. 8 and 9.)

On the 21st of August, 1867, all the right, title, and interest acquired by the United States from the said May and Graham under the aforesaid assignment of May 16, 1867, in and to the said lease, &c., were undertaken to be transferred to Alex. Bonneval, Joseph Hernandez, and George Binder, who are the remaining defendants below, by one Wm. Bell, a special agent of

the Treasury Department, (Record, pp. 113 to 116;) but the terms and conditions of the proposed transfer, it seems, failed to receive the approbation of the Secretary of the Treasury. Afterwards, however, on the 31st of October, 1867, the Solicitor of the Treasury, acting with the approval of the Secretary, and in pursuance of the authority conferred upon him by the act of May 29, 1830, and by the 9th section of the act of March 3, 1863, conveyed the same right, title, and interest, &c., to the same parties, for the consideration of $288,000, (Record, pp. 17 to 19); and by a separate agreement, executed by the Solicitor on the same day, it was covenanted that the United States should at all times protect the purchasers against, and save them harmless from, (among other things) the aforesaid instrument of assignment executed by Graham in favor of the Fourth National Bank of New York, on the 8th of May, 1867, and the effects thereof; while on the part of the purchasers it was agreed that all the liabilities due and owing by said May and Graham, as copartners, for account of the said road, should be assumed by them. (Record, pp. 101 and 102.)

Subsequent to the transfer undertaken to be made by special agent Bell, as aforesaid, and a few days before the execution of the above-mentioned conveyance by the Solicitor of the Treasury, viz., on the 15th of October, 1867, an agreement was entered into between the New Orleans and Carrolton Railroad Company, of the first part, and Beauregard, Bonneval, Hernandez,

and Binder, of the second part, whereby a fusion or consolidation was made of their respective rights and interests in and to the said railroad, its appurtenances, &c.; the interest of the parties of the second part being that held by Beauregard under the lease of April 12, 1866, which, in consequence of this fusion, was declared cancelled and annulled from the date of the agreement, and in the partnership property, together with that held by Binder, Bonneval, and Hernandez, by virtue of the purchase made by them from the United States, on the 21st of August, 1867. (Record, pp 105 to 112.)

It will be seen, from the foregoing, that the appellant, in seeking relief, stands upon the assignment made by Graham on the 8th of May, 1867, and subsequently registered at Jefferson parish on the 15th of that month; whilst the appellees, against whom relief is prayed, are the parties to the agreement of fusion or consolidation before-mentioned, some of whom derive their interests in the subject-matter of the controversy by transfer from the United States.

The only interest the United States has in the suit is what grows out of the guarantee of protection given on that transfer, to which guarantee reference has already been made. In view of this interest, the United States District Attorney was, on motion, allowed to appear in behalf of the defendants in the court below. (Record, pp. 33, 34, and 66.)

With this preliminary statement of the history of the

case, we will now proceed to a brief examination of the pleadings:

The bill alleges the lease of the railroad to Beauregard on the 12th of April, 1866; the contract of copartnership of April 18, 1866, between Beauregard, May, and Graham, in which it was acknowledged that the lease was obtained on their joint account; the assignment of Graham to the complainant on the 8th of May, 1867, whereby it is claimed all the rights and interests of the former in the copartnership and its business were transferred to the latter, &c. It then charges that the defendants have taken possession of complainant's interest in the lease, copartnership, and business of the copartnership, and refuse to acknowledge that the complainant has any interest therein; that by the articles of copartnership Graham was entitled to be reimbursed the capital invested by him, with interest, and to a third of the profits made in the business, and had the right at all times to inspect the books of the concern, and monthly statements were also to be rendered to him of the amounts received and expended; that he bound himself to make, and did actually make, certain payments therein stipulated; that all his rights were transferred to the complainant, and that the defendants, claiming to hold the interest of May in the said copartnership, by assignment from him, refuse to pay to the complainant the capital, with interest, advanced by Graham, or any of the profits earned by the copartnership, or to permit the agents of complainant to examine

its books, or to render any account whatever to the complainant; wherefore relief is prayed, as hereinbefore stated.

Three separate answers were filed: one by Bonneval, Hernandez, and Binder, one by the Railroad Company, and one by Beauregard. (Record, pp. 15, 24, 25.)

Of these answers, the first-mentioned one, which only need be noticed here, admits the contract of lease of April 12, 1866, and also the contract of partnership between Beauregard, May, and Graham, of May 18, 1866; but it avers that the interest of Graham in the latter contract remained purely nominal, he having failed to make the payments stipulated in his name, and that, in fact, no consideration ever passed from him under that contract; that even if the alleged interest of Graham was assigned to the complainant, no rights validly passed to, and none were vested in, the complainant; that Graham was entitled to no reimbursement of capital, he having invested none in the business and contract aforesaid; that he never made any payment such as he had agreed to; that every dollar apparently paid by him was, in fact, paid by May, who alone furnished the funds required under the contract; that May was the real owner of the interest standing, apparently, in the name of Graham, and that May and Beauregard were the sole owners of the whole interest, in the proportion of two-thirds to one-third. It further avers, among other things, that the assignment of

Graham was made solely to secure a balance of $45,757, supposed to be due to the complainant either from the First National Bank of New Orleans or Graham; that since the execution of the assignment a sum of $25,800 has been appropriated to the payment *pro tanto* of said balance, and that other means were provided for payment of the remainder; so that the claim of the complainant, for the security of which the assignment by Graham was made, has been satisfied and extinguished. It admits that the respondents have been put in possession of the entire interest originally held by Graham and May in the lease and contract, and in the business carried on in pursuance of the same, and avers that they are the rightful owners thereof by virtue of a *bona fide* conveyance from the United States to them of October 31, 1867; that the right and interest so conveyed to them were transferred to the United States by May, acting for himself and for Graham, on the 14th and 16th of May, 1867, &c.

To all three of the answers the complainant put in a general replication. (Record, p. 26.)

The cause being at issue, and coming on to a hearing, the court, on the 15th of May, 1869, ordered, adjudged, and decreed that there be judgment in favor of the defendant, the New Orleans and Carrolton Railroad Company, and that the bill be dismissed with a right to the complainant to bring suit against Beauregard, May, and Graham, for a settlement of whatever partnership existed between them prior to the transfer by May to

the United States, on the 14th and 16th of May, 1867. (Record, p. 120.)

This decree is, in effect, a dismissal of the bill as to all the defendants, but without prejudice as to one of them, Beauregard, against whom, including also May and Graham, who were not made parties in the cause, the complainant is at liberty to institute a new suit for settlement of the affairs of the partnership that formerly existed between those persons.

It is submitted that the decree of the court below should be affirmed by this court—

1st. Because the complainant is without equity.

It is apparent, from the evidence in the case, that the interest in the partnership held by Graham, under whom the complainant claims, was merely nominal; that the interest which stood in his name really belonged to May; and that he was introduced into the concern by May for the sole purpose of giving the latter control over the road. (See testimony of May, Record, pp. 82, 87, 88.)

On page 82 May says: "I do not recollect the precise amount furnished under the act of copartnership between Beauregard, May, and Graham, under date of April 18, 1866, to carry out the lease of the Carrolton railroad, as stated in said act. But whatever amount was to be furnished by May and Graham was actually furnished by me, but not all in my name. But they were all my own means that were furnished."

And, on page 87, he states that the interest which stood in Graham's name was his (May's;) that Graham had in his hands means belonging to May in 1866, when it is claimed Graham made payments on account of the lease, and that the understanding between them was that the payments so made should be paid out of the said means.

Graham, in fact, had not the pecuniary ability to make any payments on his own account; for May further states, on page 88: "I was intimate with Graham, and knew his pecuniary condition thoroughly. His pecuniary condition, as far as I know, was of a limited character. He simply had his salary as president of the bank."

With respect to May, his defalcation to the United States explains whence his means came, and why he should use the name of Graham as a cover to his outside transactions while Assistant Treasurer of the United States.

Graham having no real interest in the partnership concern, his assignment to the complainant could confer no right which would impart an equity to the latter as against the defendants in respect of the partnership or its effects.

2d. Because of the absence of indispensable parties.

The assignment made by Graham of his interest, such as it was, to the complainant, was not an absolute transfer, but only a pledge. Graham, it seems, had

previously guaranteed the complainant against loss for overdrafts or advances by or to the First National Bank of New Orleans, and the assignment was made as a security on account of the liability or indebtedness thus incurred by him. (See testimony of Calhoun and Seaman, Record, pp. 37, 38, 44, and 45.) As additional security, he also conveyed to the complainant a plantation on the Mississippi, and deposited with the bank $25,000. (*Ibid.*)

Graham thus had such an interest in the subject of the assignment, and in the controversy, that a final decree could not be made without either affecting that interest, or leaving the controversy in such a condition that its final determination would be wholly inconsistent with equity. May, also, was a necessary party.

This objection may be taken at any time upon the hearing, or in the appellate court.

Coiron *vs.* Millandon, 19, How., 113.

Story, Eq. Pl., 8th Edition, §§. 75, 236, and 236*a*.

And it has been held that in the case of the omission of indispensable parties, or when a complete and valid decree cannot be made, or the rights of absent parties would be affected, the objection may be taken on the hearing by the court itself, *ex mero motu*, or for the first time on appeal.

McMaken *vs.* McMaken, 18 Ala., 576.

Woodward *vs.* Wood, 19 Ala., 213.

The complainant should have made both Graham and May, along with the defendant Beauregard, parties to

his proceeding. It was a misjoinder to include the other defendants, who were not members of the partnership, had no interest therein, and had never been in any way connected with it. The decree, therefore, very properly dismissed the bill as to the latter, but without prejudice to the right of the complainant to bring a new suit against the former, who alone composed the copartnership.

A. T. AKERMAN,
Attorney General.